Supreme Court of the United States

OCTOBER TERM, 1960

No. 567

DEAN RUSK, SECRETARY OF STATE,
APPELLANT,

vs.

JOSEPH HENRY CORT

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INDEX

	Original	Print
Record from the United States District Court for the District of Columbia		
Complaint for declaratory judgment and injunctive relief	1	1
Motion of plaintiff for summary judgment	8	7
Statement under Rule 9 of the local Civil Rules of this Court	10	8
Request for a three-judge court	15	12
Opposition to plaintiff's request for a three-judge court and defendant's request for a hearing thereon	17	13
Motion to consolidate	19	15
Motion to dismiss	21	17
Orders denying motions to dismiss and to consolidate	22	18
Answer	23	19

	Original	Print
Record from the United States District Court for the District of Columbia - Continued		
Amended answer	28	23
Motion of defendant for summary judgment or, in the alternative, to remand to the Department of State	33	27
Supplement to defendant's motion for summary judgment or, in the alternative, to remand to the Department of State	35	28
Defendant's statement pursuant to Local Civil Rule 9	36	29
Opinion, Matthews, J.	39	32
Judgment	46	40
Notice of appeal to the Supreme Court of the United States	48	42
Order re exhibits	51	51
Docket entries	52	45
Clerk's certificate (omitted in printing)	56	48
Order postponing jurisdiction	57	49
Record from the United States District Court for the District of Columbia	58	50
Affidavit of plaintiff, Joseph Henry Cort in support of motion for summary judgment, dated April 5, 1960	58	50
Plaintiff's Exhibits:	76	63
A—Application for appointment as a commissioned officer in the United States Public Health Service, dated August 29, 1959	76	63
B—Record of induction	83	71
C, D, & E—Letters from Walter M. Walsh, American Vice Consul, London, England to Joseph H. Cort, dated November 28, 1951, December 10, 1951 and December 27, 1951	84	72
F—Indictment filed in U.S.D.C., District of Massachusetts, dated December 17, 1954	87	75

	Original	Print
Record from the United States District Court for the District of Columbia—Continued		
Affidavit of plaintiff, Joseph Henry Cort in support of motion for summary judgment, dated April 5, 1960—Continued		
Plaintiff's Exhibits:—Continued		
G, H, K, L—Letters from counsel, Leonard B. Boudin to Selective Service System, dated July 27, 1959, July 31, 1959, October 9, 1959, and October 16, 1959	90	76
M—Letter from Ruth M. Cort to Selective Service System, dated October 27, 1959	98	84
Z—Application for passport	101	86
—Oath of allegiance filed April 7, 1959	102	87
—Affidavit by native or naturalized American to explain protracted foreign residence, executed August 24, 1959	103	88
—Opinion of officer, Mr. John M. Dennis, taking affidavit, dated August 24, 1959	104	89
—Affidavit and supplementary explanatory statement, dated August 24, 1959	105	90
BB—Telegram from Chief Foreign Operations Division, Passport Office to Leonard B. Boudin, dated October 16, 1959	107	93
CC—Affidavit of Joseph Henry Cort, dated October 23, 1959	108	94
EE—Statement of Joseph Henry Cort, dated November 2, 1959	110	96
Defendant's Exhibits:	114	100
A—Letter from Acting Chairman, Board of Review on the Loss of Nationality, to Leonard B. Boudin, dated February 10, 1960	114	100
B—Inter-office memorandum dated February 8, 1960 in the citizenship case of Dr. Joseph Henry Cort	117	102
C—Summary of Board of Review on the Loss of Nationality, Passport Office, in the case of Joseph Henry Cort, dated December 8, 1959	119	103

	Original	Print
Record from the United States District Court for the District of Columbia—Continued		
Defendant's Exhibits:—Continued		
F-1—Stipulation by the appellant before the Board of Review on the Loss of Nationality in the Passport Office, Department of State	125	108
F-2—Passport application upon which passport No. 221544 was issued June 1, 1948	127	110
F-7—Passport renewal application, series 17928, issued May 19, 1950	129	112
F-13—Letters from Walter M. Walsh, American Vice Consul, London, England to Joseph H. Cort, dated November 28, 1951, December 10, 1951 and December 27, 1951 (copies) (omitted in printing)	130	113
G-2—Statement to the Massachusetts Advisory Committee, Boston, Massachusetts from the Local Board No. 25, Brookline, Massachusetts, dated September 8, 1952	135	114
G-3—Letter from Joseph H. Cort to the Massachusetts Medical Advisory Committee, dated December 29, 1952	136	115
G-4—Memorandum from Chairman, Massachusetts Advisory Committee to the Selective Service System, recommending active military service, dated February 3, 1953	137	117
G-5—Letter from Local Board to Joseph Henry Cort concerning physical examination, dated February 9, 1953	138	118
G-6—Order to report for physical examination, dated February 9, 1953	139	119
G-7—Letter from J. H. Cort to Local Board, No. 25, dated February 9, 1953	140	120
G-8—Order to report for physical examination, dated June 4, 1953	141	121
G-9—Statement to Chairman, Local Board No. 25 for Massachusetts State Headquarters from Selective Service, dated June 5, 1953	142	122
G-10—Letter from local board together with order to report for physical examination at Frankfurt am Main, Germany, dated July 3, 1953	143	124

	Original	Print
Record from the United States District Court for the District of Columbia—Continued		
Defendant's Exhibits: Continued		
G-11—Statement to Massachusetts State Headquarters for Selective Service from Local Board No. 25, dated August 3, 1953 together with reply concerning failure to comply with order for armed forces physical examination, dated August 6, 1953	145	126
G-12—Order for induction dated August 13, 1953	146	127
G-13—Note dated September 11, 1953 concerning anonymous telephone call	147	128
G-14—Delinquent registrant report for Selective Service System, dated September 30, 1953	148	129
H-1 & 2—Letter from Joseph H. Cort to Harvard Medical School, dated December 29, 1952 and reply dated January 7, 1953	151	131
H-3—Letter from Dr. Eugene M. Landis, Harvard Medical School to Dr. Reginald Fitz, Harvard Medical School, dated January 26, 1953	153	134
H-4—Letter from Reginald Fitz to Chairman, Massachusetts Volunteer Advisory Committee to S.S.S., dated January 29, 1953	155	137
H-5—Letter from Eugene M. Landis to Joseph Henry Cort dated January 31, 1953	156	138
H-6 & 7—Letter from Joseph Henry Cort to Professor Landis, dated February 10, 1953 and reply dated March 6, 1953	157	139
H-8—Letter from Joseph Henry Cort to Professor Landis, dated May 29, 1953	159	141
I-1—Letter from Daniel O. Omer, National Headquarters, S.S.S. to Passport Office, dated October 16, 1959	161	142
I-2—Letter from National Headquarters, S.S.S. to Acting Chairman, Board of Review on the Loss of Nationality, dated October 28, 1959	162	144

[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 868-60

JOSEPH HENRY CORT, Praha 15, Na Sypcine 3, Prague, Czechoslovakia, PLAINTIFF

v.

CHRISTIAN A. HERTER, Secretary of State, Department of State, Washington, D. C., DEFENDANT

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF—Filed March 23, 1960

The plaintiff, Joseph Henry Cort, complaining of the defendant, Christian A. Herter, Secretary of State, by his attorneys, alleges:

1. The Court has jurisdiction of this action under D. C. Code, sections 11-305 and 11-306; 28 U. S. Code, sections 1331 and 2201; and section 10 of the Administrative Procedure Act, 5 U. S. Code, section 1009. One of the purposes of this action is to enjoin the enforcement and execution of certain acts of Congress for repugnance to the Constitution. Hence a three-judge court is required to be convened under 28 U. S. Code, sections 2282 and 2284.

2. The plaintiff is a citizen of the United States having been born in Boston, Massachusetts on December 27, 1927. He has not transferred his allegiance to or become a citizen or national of any other country.

[fol. 2] 3. The plaintiff is a physician and research physiologist. He presently resides with his wife and their two infant children, all American citizens, in Prague, Czechoslovakia where he is employed at the Institute for Cardiovascular Research.

4. The defendant, Christian A. Herter, is Secretary of State of the United States and has his office in the District of Columbia.

5. On June 1, 1948 the plaintiff was issued a United States passport which was renewed on May 19, 1950 for a period of two years.

6. On May 29, 1951 the plaintiff departed from the United States for the sole purpose of carrying out the terms of a Fellowship given by the National Foundation for Infantile Paralysis, Inc., an American corporation, for work to be performed by the plaintiff at the Department of Experimental Medicine, University of Cambridge, England.

7. Prior to the said departure the plaintiff had registered on May 25, 1951 under and prior to the effective date of the Doctors Draft Act (64 Stat. 826, 50 App. U.S.C. §§ 454 *et seq.*) after having been advised by the New Haven Draft Board and by the Yale University Advisor for the Draft that he could take up the said position in Cambridge, England.

8. The plaintiff assumed his duties at the University of Cambridge where he was employed from 1951 to 1953; thereafter from 1953 to 1954 he was employed at the Medical School of the University of Birmingham, Birmingham, England.

9. Shortly after his arrival in England, namely, on [fol. 3] November 28, 1951 and on several occasions thereafter, the American Embassy in London, upon instructions of the Department of State, demanded that the plaintiff surrender his passport and return immediately to the United States. The said demand by the Department of State was made pursuant to departmental policies subsequently embodied in regulations, which regulations were declared invalid as unauthorized by law by the United States Supreme Court on June 16, 1958 in *Kent & Briehl* v. *Dulles*, 357 U. S. 116.

10. On or about September 14, 1953 a Draft Board in Brookline, Massachusetts ordered plaintiff to report for induction into the armed forces of the United States. Plaintiff did not appear for induction and was subsequently indicted on December 17, 1954 by a grand jury in the United States District Court for the District of Massachusetts on the charge of having failed to comply with the said order.

11. Plaintiff believed and the facts were that the induction order was not issued in good faith to secure his military services, that his past political associations and present physical disabilities made him ineligible for such service, and that he was being ordered to report back to the United States to be served with a Congressional committee subpoena or indicted under the Smith Act (54 Stat. 670, 18 U.S.C. § 2385).

12. Plaintiff had departed from the United States for the reason set forth in paragraph 6 above and he remained abroad for the reasons set forth in paragraph 6 and 8 above. He did not depart from or remain outside the [fol. 4] United States for the purpose of evading or avoiding training and service in the military, air or naval forces of the United States.

13. Contemporaneously with and subsequent to the said order to report for induction, the United States sought of Great Britain the plaintiff's expulsion and deportation to the United States. Accordingly, the British Government refused to review the plaintiff's English residence permit. He thereupon traveled with his family to Czechoslovakia where he was and is employed doing research in physiology at the Institute for Cardiovascular Research, as set forth above.

14. On or about April 7, 1959 the plaintiff applied at Prague for the issuance of a passport in order to return to the United States with his wife and children so that he might fulfill his obligations under the Selective Service laws and his wife might secure medical treatment for multiple sclerosis.

15. In connection with his application for a passport the plaintiff stated the facts with respect to his residence abroad recited above and the American Consul in Prague certified that

> "Without evidence to the contrary, the Consular officer has no reason to doubt Dr. Cort's statements made in the attached affidavit which purports to answer the charge that he departed from and remained outside the jurisdiction of the United States for the purpose of evading or avoiding training and service in the Armed Forces of the United States."

16. On October 15, 1959 the Passport Office of the Department of State made an administrative decision that [fol. 5] plaintiff had expatriated himself under the provisions of § 349 (a)(10) of the Immigration & Nationality Act of 1952 [8 U.S.C. § 1481 (a)(10)] herein called the Act, and denied the plaintiff's application for a passport.

17. On February 10, 1960 the Department's Board of Review on the Loss of Nationality affirmed the said decision of the Passport Office.

18. Said decisions were made without any evidence that the plaintiff had departed from the United States or remained abroad for the purpose of avoiding his obligations under the Selective Service laws; they were made despite plaintiff's affidavits under oath to the contrary; they were made in the face of a decision of the United States District Court for the Southern District of California that the said statutory provisions were unconstitutional. *Mendoza-Martinez* v. *Mackey* (S.D. Calif., No. 1314-ND), appeal pending *sub nom Mackey* v. *Mendoza-Martinez*, Oct. Term, 1958, No. 649.

19. The defendant's action is unlawful in that:

(a) There is no evidence whatsoever that the plaintiff's departure from or remaining outside the United States was for the purpose of avoiding his military obligations.

(b) The statutory provision of the Act, § 349(a)(10), that failure to comply with any provision of the compulsory service laws shall raise a presumption that the departure from or absence from the United States was for the purpose of avoiding military obligations.

[fol. 6] (i) is inapplicable in the absence of a judicial finding resulting from a criminal conviction for avoidance of military service obligations.

(ii) is unreasonable, arbitrary and invalid, and

(iii) is overcome by the plaintiff's sworn statements as to his reasons for departing from the United States and for remaining abroad.

(c) The Act is unconstitutional in that:

(i) it is not a reasonable or proper exercise of the foreign affairs, war, or other powers of the Congress;

(ii) under the Fifth Amendment and otherwise, a native-born citizen may not constitutionally be deprived of his American nationality against his will;

(iii) the resulting deprivation is so severe as to contravene the Eighth Amendment's protection of persons against cruel and unusual punishment; and

(iv) the Congressional attempt to exercise a power reserved to the people and not delegated to the United States by the Constitution violates the Ninth and Tenth Amendments.

20. The plaintiff has exhausted his administrative remedies.

21. The defendant's actions in denying the plaintiff the [fol. 7] passport facilities sought and in decreeing plaintiff's loss of nationality, and hence statelessness, have caused plaintiff irreparable injury for which he has no adequate remedy at law.

Wherefore, plaintiff demands judgment

(1) enjoining the defendant, his successors and subordinates, from carrying out or enforcing the provisions of § 349 (a)(10) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1481 (a)(10), as being unconstitutional, and from denying plaintiff any of the rights and privileges of a citizen of the United States, and from withholding from the plaintiff a United States passport;

(2) ordering the revocation and nullification of the certificate of loss of nationality heretofore issued to the plaintiff;

(3) ordering that the defendant issue to the plaintiff a valid United States passport of standard form and duration;

(4) declaring that the plaintiff is a citizen of the United States and is entitled to all of the rights and privileges of a citizen of the United States; and

(5) granting such other and further relief as may be just and proper in the premises.

Rabinowitz & Boudin
25 Broad Street
New York 4, N. Y.

By

/s/ Leonard B. Boudin

Forer and Reis
711 - 14th Street N. W.
Washington, D. C.

By

/s/ David Rein

Attorneys for Plaintiff

[fol. 8] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION OF PLAINTIFF FOR SUMMARY JUDGMENT Filed April 20, 1960

Now comes the plaintiff by his attorneys and, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and Rule 9 of the Local Civil Rules of this Court, moves the Court to enter summary judgment for the plaintiff on the ground that there is no genuine issue as to any material fact, and the plaintiff is entitled to judgment as a matter of law.

In support of this motion, plaintiff refers to the entire record herein including the complaint, transcript of proceedings before the Board of Review on the Loss of Nationality, affidavit of the plaintiff sworn to the 5th day of April, 1960, and plaintiff's Statement Under Rule 9 of the Local Civil Rules of this Court dated April 20, 1960.

/s/ Leonard Boudin
RABINOWITZ & BOUDIN
25 Broad Street
New York 4, N. Y.

/s/ David Rein
FORER & REIN
711 - 14th Street N.W.
Washington, D. C.

Attorneys for Plaintiff

[fol. 9] Acknowledgment of service

[omitted in printing]

[fol. 10] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

STATEMENT UNDER RULE 9 OF THE LOCAL CIVIL RULES OF THIS COURT—Filed April 26, 1960

The following are the material facts as to which the plaintiff contends there is no genuine issue:

1. Plaintiff was born in the United States on December 27, 1927 and thereupon became an American citizen by birth.

2. The details of plaintiff's marriage and the birth of his children are set forth in paragraph 3 of his affidavit of April 5, 1960 (herein referred to as the Affidavit).

3. Plaintiff's educational background, employment and writings are set forth in paragraph 4 of the Affidavit and in Exhibit A attached thereto.

4. Plaintiff has repeatedly stated under oath that he did not depart from the United States or remain abroad for the purpose of avoiding his military service obligations.

5. There is no evidence to rebut these statements under oath. The American Consul in Prague certified on August [fol. 11] 24, 1959 that he had no such evidence or any reason to doubt plaintiff's statements in his affidavit of August 24, 1959. No such evidence was offered in the administrative proceedings in the Passport Office or in the hearing before the Board of Nationality Review. Instead of evidence the defendant relies exclusively upon the statutory presumption in § 349 (a) (10) of the Immigration and Nationality Act of 1952 (herein called the Act).

6. Plaintiff went abroad and remained abroad for the professional reasons set forth in paragraphs 12, 13 and 22 of his Affidavit.

7. There is no evidence in defendant's possession to rebut the statement made in paragraph 6 above.

8. Plaintiff duly registered under the Selective Service Laws and was told officially that he could depart for England in 1951, as more particularly set forth in paragraph 12 of the Affidavit.

9. Plaintiff's physical and political disabilities were such that he would not have been accepted by the Army, as appears more particularly in paragraphs 10 and 12 of the Affidavit.

10. In 1953 and 1954 plaintiff believed the facts set forth in paragraph 9 above.

11. In 1959 General Lewis Hershey, Director of the Selective Service System, confirmed the accuracy of this belief, as more particularly appears in paragraph 27 of the Affidavit.

12. In 1953 plaintiff had been illegally deprived of his passport by the United States Department of State, as more particularly appears in paragraphs 14, 15 and 16 of his Affidavit.

[fol. 12] 13. By reason of paragraph 12 above, plaintiff could not lawfully have departed from Great Britain in 1953 and could not lawfully have entered the United States.

14. In 1953 the House Committee on Un-American Activities had inquired concerning and had given notoriety to plaintiff's political activities, as is more particularly set forth in paragraph 18 of the Affidavit.

15. Plaintiff did not return to the United States because he feared political persecution, as more particularly appears in paragraph 19 of his Affidavit.

16. Plaintiff was advised by counsel and believed, as appears in paragraph 20 of his Affidavit, that he was not legally required to report to United States Selective Service Board notices which were transmitted to him on British soil.

17. Plaintiff sought employment in India, Israel and elsewhere in 1954 when the British Government terminated his residence permit.

18. Plaintiff was offered employment in Czechoslovakia, as appears in paragraph 21 of his Affidavit, and accepted such employment.

19. Plaintiff, as more particularly appears from paragraph 22 of his Affidavit, did not engage in any conduct

indicating a withdrawal of allegiance from the United States or a transfer of allegiance to Czechoslovakia or any other country.

20. Plaintiff has retained his ties to the United States, as appears more particularly in paragraphs 3, 23 and 34 of the Affidavit.

[fol. 13] 21. Plaintiff's children are registered in the American Embassy at Prague as American citizens.

22. Plaintiff has sought since 1950 to comply with his obligations under the Selective Service Laws, as appears more particularly in paragraphs 24-38 of the Affidavit.

23. Plaintiff applied on April 7, 1959 at the American Consulate in Prague for a passport to come to the United States with his family. He executed the application annexed as Exhibit Z to the Affidavit.

24. In support of the application plaintiff also executed affidavits and statements as follows:

Affidavit of August 24, 1959—Exhibit Z of the Affidavit

Affidavit and Supplementary Explanatory Statement of August 24, 1959—Exhibit Z of the Affidavit

Statement of November 2, 1959—Exhibit EE of the Affidavit

25. Plaintiff has been denied a passport by the defendant on the ground that he expatriated himself under 349 (a) (10) of the Act.

26. No court has ever made a decision in a criminal proceeding or otherwise that plaintiff remained abroad for the purposes prohibited by the said statutory provision.

27. Although plaintiff was indicted, as appears in paragraph 47 of the Affidavit, plaintiff has not been tried under the said indictment.

28. Plaintiff executed and filed the Application for Appointment as a Commissioned Officer in the United States Public Health Service attached as Exhibit A to the Affidavit.

29. The letters, telegrams, statements and other papers attached as Exhibits A-EE are true copies of the originals

[fol. 14] 30. The statements made by or on behalf of plaintiff in the papers referred to in paragraph 29 above are true.

31. The defendant has no evidence in its possession to rebut the statements made by or on behalf of plaintiff and referred to in paragraph 30 above.

32. No evidence was presented by the Government or otherwise in the Passport Office or before the Board of Nationality Review which cast doubt upon the truth of the statements of fact made in plaintiff's Affidavit, plaintiff's complaint, or the exhibits attached to the said Affidavit.

33. The defendant, CHRISTIAN A. HERTER, is Secretary of State of the United States and has his office in the District of Columbia.

34. The statements of fact set forth in the allegations of the complaint, paragraphs 2 through 18, are true.

35. The allegations of fact are set forth in paragraphs 1 through 38 of the complaint are accurate.

Dated, April 20, 1960.

s Leonard B. Boudin
Rabinowitz & Boudin
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New York 4, N. Y.

s David Rein
Forer and Rein
711 - 14th Street N.W.
Washington, D. C.
Attorneys for Plaintiff

[fol. 15] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

REQUEST FOR A THREE-JUDGE COURT—Filed April 26, 1960

Comes now the plaintiff in the above entitled cause and upon the complaint herein and the motions for a preliminary injunction and summary judgment and the attached affidavit of the plaintiff suggests to the Court the necessity of convening a three-judge court in conformity with 28 U. S. Code, sections 2282 and 2284, for the reason that plaintiff seeks to restrain the enforcement and execution of an Act of Congress, namely, section 349 (a) (10) of the Immigration and Nationality Act of 1952, 8 U. S. Code, 1481 (a) (10), for repugnance to the Constitution of the United States.

/s/ Leonard B. Boudin
RABINOWITZ & BOUDIN
25 Broad Street
New York 4, N. Y.

/s/ David Rein
FORER AND REIN
711 - 14th Street N. W.
Washington, D. C.
Attorneys for Plaintiff

[fol. 16] Acknowledgement of service

(omitted in printing)

[fol. 17] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

OPPOSITION TO PLAINTIFF'S REQUEST FOR A THREE-JUDGE COURT AND DEFENDANT'S REQUEST FOR HEARING THEREON
Filed May 2, 1960

Comes now defendant by his attorney, the United States Attorney, and opposes plaintiff's request for a three-judge court pursuant to 28 USC §§ 2282 and 2284 and, further, requests a hearing thereon, preferably at the same time as defendant's pending Motion To Dismiss is heard.

Defendant opposes the request on the following grounds: First, the Court is without jurisdiction to entertain this suit and thus the complaint is subject to dismissal at the outset by the single District Judge to whom the case is first assigned. In support of this ground, defendant hereby incorporates herein by reference his Motion to Dismiss, together with the supporting memorandum of points and authorities, which is now awaiting consideration and determination.

Second, if the Court has jurisdiction to entertain this suit, plaintiff has failed to present a substantial constitutional question as might warrant the convening of a three-judge court. Defendant believes that plaintiff's contentions to the contrary are not supported by the authorities upon which he relies in his recently filed Motion For Summary Judgment.

For the Court's information, defendant intends to oppose plaintiff's Motion For Summary Judgment and to

file a cross-motion if the Court denies his Motion To Dismiss or grants plaintiff's application.

/s/ Oliver Gasch
United States Attorney

[fol. 18]

/s/ Edward P. Troxell, Principal
Assistant United States Attorney

/s/ John F. Doyle
Assistant United States Attorney

/s/ Harold D. Rhynedance, Jr.
Assistant United States Attorney

Certificate of Service (omitted in printing)

[fol. 19] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 324-60

ANGELIKA L. SCHNEIDER, PLAINTIFF

v.

CHRISTIAN A. HERTER, DEFENDANT

Civil Action No. 777-60

ANNE d'ARBELOFF GUÉRRIERI, PLAINTIFF

v.

CHRISTIAN A. HERTER, DEFENDANT

Civil Action No. 868-60

JOSEPH HENRY CORT, PLAINTIFF

v.

CHRISTIAN A. HERTER, DEFENDANT

MOTION TO CONSOLIDATE—Filed May 2, 1960

Comes now defendant in each of the above-captioned actions by his attorney, the United States Attorney, and moves to consolidate the aforesaid actions for hearing, consideration and disposition of (1) the jurisdictional grounds asserted by defendant in the above-captioned actions, and (2) the constitutional grounds asserted by the respective plaintiffs in the above-captioned actions, unless such actions are sooner dismissed on jurisdictional grounds. As reasons for the requested consolidation, defendant states that the above-captioned actions involve

certain common questions of law, as reflected by the attached Memorandum Of Points And Authorities In Support Of Defendant's Motion To Consolidate.

/s/ Oliver Gasch
United States Attorney

[fol. 20]

/s/ Edward P. Troxell, Principal
Assistant United States Attorney

/s/ John F. Doyle
Assistant United States Attorney

/s/ Harold D. Rhynedance, Jr.
Assistant United States Attorney

Certificate of Service (omitted in printing)

[fol. 21] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION TO DISMISS—Filed May 2, 1960

Comes now defendant by his attorney, the United States Attorney, and moves to dismiss the complaint on one or more of the following grounds: (1) The Court lacks jurisdiction over the person of the plaintiff; (2) The Court lacks jurisdiction over the subject matter; and (3) The plaintiff has failed to exhaust the administrative remedies afforded by Section 360 of the Immigration and Nationality Act of 1952.

/s/ Oliver Gasch
United States Attorney

/s/ Edward P. Troxell, Principal
Assistant United States Attorney

/s/ John F. Doyle
Assistant United States Attorney

/s/ Harold D. Rhynedance, Jr.
Assistant United States Attorney

Certificate of Service (omitted in printing)

[fol. 22] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER DENYING MOTIONS TO DISMISS AND TO CONSOLIDATE—
July 13, 1960.

This cause having been heard on defendant's motions to dismiss and to consolidate this cause with the cases of *Schneider v. Herter*, C. A. No. 324-60, and *Guerrieri v. Herter*, C. A. No. 777-60, and the Court having considered the entire record and Memoranda of Points and Authorities filed herein and having heard argument in open court, it is by the Court, this 13th day of July, 1960

ORDERED, that defendant's motions to dismiss and to consolidate this cause be and they hereby are denied.

/s/ Burnita Shelton Matthews
District Judge

No objection as to form

/s/ John F. Doyle
Assistant U.S. Attorney

[fol. 23] IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER Filed July 22, 1960

In answer to the complaint defendant, by and through his attorney the United States Attorney, states as follows:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

Answering specifically the numbered paragraphs of the complaint defendant avers as follows:

1. Defendant is not required to answer the allegations contained in paragraph 1 of the complaint.

2. Defendant denies that plaintiff is a citizen of the United States, but further answering admits that plaintiff was born in Boston, Massachusetts on December 27, 1927. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2 of the complaint.

3. Defendant admits that plaintiff possesses the degree [fol. 24] of medical doctor and that his wife and children are citizens of the United States. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 3 of the complaint.

4. Defendant admits the allegations contained in paragraph 4 of the complaint.

5. Defendant admits the allegations contained in paragraph 5 of the complaint, except that defendant avers that plaintiff's passport was renewed on June 19, 1950, not May 19, 1950.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the complaint.

7. Defendant admits that plaintiff was registered as a "special registrant" on May 25, 1951, under the provisions of the Doctor's Draft Law in addition to his "regular" registration under the Universal Training and Service Act of 1948 on July 5, 1949. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 7 of the complaint.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint.

9. Defendant admits the allegations contained in paragraph 9 of the complaint.

10. Defendant admits the allegations contained in para-
[fol. 25] graph 10 of the complaint.

11. Defendant denies the allegations contained in paragraph 11 of the complaint.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 12 of the complaint. Defendant denies the remaining allegations contained in paragraph 12 of the complaint.

13. Defendant denies the allegations contained in paragraph 13 of the complaint, except that defendant admits that plaintiff took up residence in Czechslovakia on August 8, 1954. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff's employment.

14. Defendant admits that plaintiff executed an application for a passport at the United States Embassy in Prague, Czechoslovakia on April 7, 1959. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14 of the complaint.

15. Defendant denies the allegations contained in paragraph 15 of the complaint, except that defendant admits that the comment quoted appeared on the reverse of plaintiff's Affidavit to Explain Protracted Foreign Residence.

16. Defendant admits the allegations contained in paragraph 16 of the complaint.

17. Defendant admits the allegations contained in paragraph 17 of the complaint, except that the affirmance [fol. 26] occurred on December 8, 1959, and was communicated to plaintiff in a communication dated February 10, 1960.

18. Defendant denies the allegations contained in paragraph 18 of the complaint.

19. Defendant denies the allegations contained in paragraph 19 of the complaint.

19 (a). Defendant denies the allegations contained in paragraph 19 (a) of the complaint.

19 (b)(i). Defendant denies the allegations contained in paragraph 19 (b)(i) of the complaint.

19 (b)(ii). Defendant denies the allegations contained in paragraph 19 (b)(ii) of the complaint.

19 (b)(iii). Defendant denies the allegations contained in paragraph 19 (b)(iii) of the complaint.

19 (c). Defendant denies the allegations contained in paragraph 19 (c) of the complaint.

19 (c)(i). Defendant denies the allegations contained in paragraph 19 (c)(i) of the complaint.

19 (c)(ii). Defendant denies the allegations contained in paragraph 19 (c)(ii) of the complaint.

19 (c)(iii). Defendant denies the allegations contained in paragraph 19(c)(iii) of the complaint.

19 (c)(iv). Defendant denies the allegations contained in paragraph 19 (c)(iv) of the complaint.

20. Defendant denies the allegations contained in paragraph 20 of the complaint.

21. Defendant denies the allegations contained in paragraph 21 of the complaint.

[fol. 27]

Third Defense

This Court lacks jurisdiction over the subject matter of the complaint.

Fourth Defense

Plaintiff's failure to exhaust the exclusive remedy provided by Congress deprives this Court of jurisdiction.

Fifth Defense.

The complaint fails to raise a substantial constitutional question.

/s/ Oliver Gasch
United States Attorney

/s/ Edward P. Troxell, Principal
Assistant United States Attorney

/s/ John F. Doyle
Assistant United States Attorney

/s/ Robert J. Asman
Assistant United States Attorney

Certificate of Service (omitted in printing)

[fol. 28] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

AMENDED ANSWER—Filed Aug. 15, 1960

In making this amended answer to the complaint defendant, by and through his attorney the United States Attorney, states as follows:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

Answering specifically the numbered paragraphs of the complaint defendant avers as follows:

1. Defendant is not required to answer the allegations contained in paragraph 1 of the complaint.

2. Defendant denies that plaintiff is a citizen of the United States, but further answering admits that plaintiff was born in Boston, Massachusetts on December 27, 1927. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2 of the complaint.

3. Defendant admits that plaintiff possesses the degree of medical doctor and that his wife and children are citizens of the United States. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 3 of the complaint.

4. Defendant admits the allegations contained in paragraph 4 of the complaint.

[fol. 29] 5. Defendant admits the allegations contained in paragraph 5 of the complaint, except that defendant avers that plaintiff's passport was renewed on June 19, 1950, not May 19, 1950.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the complaint.

7. Defendant admits that plaintiff was registered as a "special registrant" on May 25, 1951, under the provisions of the Doctor's Draft Law in addition to his "regular" registration under the Universal Training and Service Act of 1948 on July 5, 1949. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 7 of the complaint.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint.

9. Defendant admits the allegations contained in paragraph 9 of the complaint.

10. Defendant admits the allegations contained in paragraph 10 of the complaint.

11. Defendant denies the allegations contained in paragraph 11 of the complaint.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 12 of the complaint.

13. Defendant denies the allegations contained in paragraph 13 of the complaint, except that defendant admits that plaintiff took up residence in Czechoslovakia on August 8, 1954. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff's employment.

14. Defendant admits that plaintiff executed an application for a passport at the United States Embassy in Prague, Czechoslovakia on April 7, 1959. Defendant is without knowledge or information sufficient to form a [fol. 30] belief as to the truth of the remaining allegations contained in paragraph 14 of the complaint.

15. Defendant denies the allegations contained in paragraph 15 of the complaint, except that defendant admits that the comment quoted appeared on the reverse of plaintiff's Affidavit to Explain Protracted Foreign Residence.

16. Defendant admits the allegations contained in paragraph 16 of the complaint.

17. Defendant admits the allegations contained in paragraph 17 of the complaint, except that the affidavit was current on December 8, 1960, and was communicated to plaintiff in a communication dated February 10, 1961.

18. Defendant denies the allegations contained in paragraph 18 of the complaint.

19. Defendant denies the allegations contained in paragraph 19 of the complaint.

19 (a). Defendant denies the allegations contained in paragraph 19 (a) of the complaint.

19 (b)(i). Defendant denies the allegations contained in paragraph 19 (b)(i) of the complaint.

19 (b)(ii). Defendant denies the allegations contained in paragraph 19 (b)(ii) of the complaint.

19 (b)(iii). Defendant denies the allegations contained in paragraph 19 (b)(iii) of the complaint.

19 (c). Defendant denies the allegations contained in paragraph 19 (c) of the complaint.

19 (c)(i). Defendant denies the allegations contained in paragraph 19 (c)(i) of the complaint.

19 (c)(ii). Defendant denies the allegations contained in paragraph 19 (c)(ii) of the complaint.

19 (c)(iii). Defendant denies the allegations contained in paragraph 19 (c)(iii) of the complaint.

19 (c)(iv). Defendant denies the allegations contained in paragraph 19 (c)(iv) of the complaint.

20. Defendant denies the allegations contained in paragraph 20 of the complaint.

21. Defendant denies the allegations contained in paragraph 21 of the complaint.

Third Defense

The complaint should be dismissed on the ground that the Court lacks jurisdiction of the person of the plaintiff.

Fourth Defense

The complaint should be dismissed on the ground that the Court lacks jurisdiction of the subject matter.

Fifth Defense

The complaint should be dismissed for the reason that plaintiff has failed to exhaust the exclusive remedies provided by Congress under Section 360 of the Immigration and Nationality Act of 1952.

Sixth Defense

Even assuming arguendo that the remedies available to plaintiff under Section 360 of the Immigration and Nationality Act of 1952 are not exclusive, they are the specified remedies which in the circumstances of the instant case must first be exhausted by plaintiff before the Court may obtain jurisdiction over the person of the plaintiff and the subject matter. The complaint fails to reflect any basis upon which plaintiff's failure to exhaust the specified remedies provided by Section 360 of the Immigration and Nationality Act of 1952 may be excused. Hence, the complaint should be dismissed by reason of plaintiff's failure to exhaust such remedies.

[fol. 32] *Seventh Defense*

The complaint fails to raise a substantial constitutional question.

/s/ Oliver Gasch
United States Attorney

/s/ Edward P. Troxell, Principal
Assistant United States Attorney

/s/ John F. Doyle
Assistant United States Attorney

/s/ Harold D. Rhynedance, Jr.
Assistant United States Attorney

Certificate of Service (omitted in printing)

[fol. 33] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION OF DEFENDANT FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, TO REMAND TO THE DEPARTMENT OF STATE—Filed Sept. 3, 1960

Comes now defendant by his attorney, the United States Attorney, and moves for summary judgment or, in the alternative, to remand to the Department of State for the reasons that on the basis of the pleadings and the record of the administrative proceedings of the Department of State pertaining to plaintiff there is no genuine issue of material fact and defendant is entitled to judgment as a matter of law and that, if the Court determines that there is now present a genuine issue of material fact not previously asserted by plaintiff in such administrative proceedings, the case should be remanded to the Department of State for further appropriate administrative proceedings without the Court permitting a judicial trial *de novo* of such issue.

Attached hereto and made a part hereof are certified copies of records of the Department of State pertaining to plaintiff, identified as defendant's Exhibits A, B, C, D, E, F, G and H.

/s/ Oliver Gasch
United States Attorney

/s/ Edward P. Troxell, Principal
Assistant United States Attorney

[fol. 34]

/s/ John F. Doyle
Assistant United States Attorney

/s/ Harold D. Rhynedance, Jr.
Assistant United States Attorney

Certificate of Service (omitted in printing)

[fol. 35] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

SUPPLEMENT TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE TO REMAND TO THE DEPARTMENT OF STATE—Filed Sept. 9, 1960

Comes now defendant by his attorney, the United States Attorney, and supplements his motion for summary judgment or, in the alternative, to remand to the Department of State by the attached certified copies of documents from the files of the Department of State pertaining to plaintiff, identified as Defendant's Exhibit 1.

/s/ Oliver Gasch
United States Attorney

/s/ Edward P. Troxell, Principal
Assistant United States Attorney

/s/ John F. Doyle
Assistant United States Attorney

/s/ Harold D. Rhynedance, Jr.
Assistant United States Attorney

Certificate of Service (omitted in printing)

[fol. 36] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

DEFENDANT'S STATEMENT PURSUANT TO LOCAL CIVIL RULE 9
Filed Sept. 3, 1960

I

Complying with Local Civil Rule 9(d) of this Court, defendant states that, in accordance with his view that the Court's function in the instant case is limited to judicial review of the prior administrative proceedings concluded by the Department of State respecting plaintiff, the following are the material facts as to which the former believes there is no genuine issue:

1. Plaintiff, who was born in Boston, Massachusetts, on December 27, 1927, left the United States on or about May 29, 1951 and arrived in England on or about June 2, 1951. He remained in England until July 30, 1954 and has been living in Czechoslovakia since August 8, 1954.

2. As of December 29, 1952, plaintiff intended to return to the United States on or before sometime in July 1953.

3. Plaintiff, who had previously registered with the Selective Service authorities, received notices from his local draft board, dated February 9, 1953, June 4, 1953 and July 3, 1953, ordering him to report for physical examination.

4. Plaintiff received an order from his local draft board, dated August 13, 1953, to report for induction on September 14, 1953.

[fol. 37] 5. Plaintiff did not comply with any of those notices and order or make any reply to the local draft board.

6. Plaintiff did not return to the United States as he had planned but remained in Europe.

7. During the above-mentioned period, the United States was in a state of national emergency.

8. The administrative authorities found the above-facts and additionally (a) that plaintiff had not overcome the presumption raised in the last sentence of Section 349(a)(10) of the Immigration and Nationality Act of 1952, and (b) that plaintiff remained outside of the jurisdiction of the United States for the purpose of avoiding training and service in the military, air, or naval forces of the United States, thus expatriating himself under the provisions of the aforementioned section of law.

9. Upon the conclusion of the administrative proceedings of the Department of State, plaintiff through counsel was advised of the final administrative determination.

II

If the Court decides, contrary to defendant's position herein, and notwithstanding the administrative record before the Court, that plaintiff may assert at this posture of the case factual issues which were raised or could have been raised in the previous administrative proceedings now concluded, defendant believes that the following paragraphs of plaintiff's "Statement Under Rule 9 Of The Civil Rules Of This Court" set forth genuine issues of material fact: 5, 6, 7, 9, 10, 15, 30, 31, 32, 34 and 35.

Nonetheless, the above-specified factual allegations were resolved against plaintiff in the previous proceedings of [fol. 38] the Department of State. As the administrative record of those proceedings is now before the Court, defendant believes that there no longer is any genuine issue of material fact but solely questions of law for consideration on judicial review of such record.

The remainder of the allegations found in plaintiff's Statement appear to reflect both immaterial facts (some being in dispute) and material facts not in dispute. Ac-

cordingly, no further response is believed required with respect to those allegations.

/s/ Oliver Gasch
United States Attorney

/s/ Edward P. Troxell, Principal
Assistant United States Attorney

/s/ John F. Doyle
Assistant United States Attorney

/s/ Harold D. Rhynedance, Jr.
Assistant United States Attorney

Certificate of Service (omitted in printing)

[fol. 39] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 868-60

JOSEPH HENRY CORT, PLAINTIFF

v.

CHRISTIAN A. HERTER, Secretary of State, DEFENDANT

OPINION—Oct. 11, 1960

Leonard B. Boudin, of New York, N. Y.; and David Rein, of Washington, D. C., for the plaintiff.

Oliver Gasch, United States Attorney, Edward P. Troxell, Principal Assistant United States Attorney, John F. Doyle and Harold D. Rhynedance, Jr., Assistant United States Attorneys.

Before EDGERTON, Circuit Judge, and TAMM and MATTHEWS, District Judges.

MATTHEWS, District Judge.

The plaintiff, a citizen of the United States by birth, has been declared to have lost his American citizenship by reason of remaining outside the United States for the purpose of avoiding training and service in the armed forces of this country. He has been refused a passport on which to return from abroad. He denies the purpose attributed to him and also challenges the validity of the law under which his loss of citizenship was declared. This law, Section 349(a)(10) of the Immigration and Nationality Act of 1952, 66 Stat. 163, 267-268, 8 U.S.C. 1481(a)(10),[1] provides:

[1] Section 401 of the Nationality Act of 1940, 54 Stat. 1168, was amended in 1944 by adding a subsection (j), 58 Stat. 746. Section 401(j) was reenacted in the Immigration and Nationality Act of 1952 in Section 349(a) (10).

"(a) . . . a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by:

• • • •

"(10) departing from or remaining outside of the jurisdiction of the United States in time of war or [fol. 40] during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. For the purposes of this paragraph failure to comply with any provision of any compulsory service laws of the United States shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States."

The plaintiff was born in Boston, Massachusetts, on December 27, 1927. He is a physician and research physiologist. In May 1951, he departed from the United States for temporary work in England. His draft board in Brookline, Massachusetts, ordered him to report in September 1953 for induction into the armed forces of the United States but he did not appear and thereafter was indicted on the charge of having failed to comply with the order. At the instance of the United States the British Government refused to renew the plaintiff's residence permit. Instead of returning to the United States he traveled to Czechoslovakia where he was and is employed. In 1959 he applied for a United States passport to enable him to return to this country. The Passport Office of the Department of State made an administrative decision that the plaintiff had expatriated himself by remaining outside the United States for the purpose of avoiding service in the armed forces and refused him a passport. Early in 1960 the Department's Board of Review on the Loss of Nationality affirmed the decision of the Passport Office.

Shortly thereafter plaintiff brought this suit for a judgment declaring him to be a citizen of the United States.

He seeks an interlocutory and permanent injunction to restrain the enforcement and execution of the challenged provision of law. He contends that Congress is without power to attach loss of citizenship as a consequence of avoiding service in the armed forces by remaining abroad. He also argues that such an exercise of power would violate the Due Process Clause of the Fifth Amendment to the United States Constitution as well as the prohibition against cruel and unusual punishments in the Eighth Amendment. On the plaintiff's application this three-[fol. 41] judge statutory court has been convened to hear and determine the case.[2]

A motion for summary judgment has been filed by the plaintiff and also by the Government. In addition the Government has moved to dismiss the action, asserting that the plaintiff has failed to pursue his exclusive remedy for obtaining a review of his citizenship status. This exclusive remedy, according to defendant, is provided by Section 360(b) and (c) of the Immigration and Nationality Act of 1952, 66 Stat. 163, 273-274, 8 U.S.C. 1503(b) and (c).

We will first give consideration to the ground advanced in support of the motion to dismiss. It is provided in subdivision (b) of Section 360 that any person who is not within the United States and who is denied a right or privilege upon the ground that he is not a national of the United States may make application to a diplomatic or consular officer for a certificate of identity for the purpose of traveling to a port of entry in the United States and applying for admission. Subdivision (c) of that section provides that if such person is granted and in possession of a certificate of identity he may then apply for admission to the United States at any port of entry, and if it is finally determined by the Attorney General that such person is not entitled to admission then such determination

[2] 28 U.S.C. 2282 provides:

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

is subject to review by any court of competent jurisdiction "in habeas corpus proceedings and not otherwise."

Section 360 may well be thought to provide an exclusive remedy for a person outside of the United States who has sought and obtained a certificate of identity and who has applied for admission to the United States at a port of entry. But we need not determine that question. The language of the section shows no intention to provide an exclusive remedy, or any remedy, for persons outside the United States who have not adopted the procedures out [fol. 42] lined in subsections (b) and (c). Neither does the section indicate that such persons are to be denied existing remedies. The legislative history of the section does not require such a construction. Cf. *Frank* v. *Rogers*, 102 U.S. App.D.C. 367, 253 F.2d 889; *Tom Mung Ngoie* v. *Dulles*, 122 F.Supp. 709 (D.C.D.C.). Subsections (b) and (c) were designed to regulate, not to require, the use of certificates of identity.

While the plaintiff might have applied for a certificate of identity for the purpose of following the procedure set forth in Section 360, there is nothing in this case to indicate that he ever did or that such a certificate has been issued to him. Instead, he has chosen to bring this action under the Declaratory Judgment Act for a judgment declaring him to be a United States citizen.

We hold that the complaint in this case presents a controversy to which the judicial power extends under the Constitution, and that authority to hear and determine it has been conferred upon the District Court by the Declaratory Judgment Act and the Administrative Procedure Act.[3] *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 239-241, 244; *Perkins* v. *Elg*, 69 App.D.C. 175, 99 F.2d 408, affirmed 307 U.S. 325; *Tom Mung Ngoie* v. *Dulles*, supra; *Frank* v. *Rogers*, supra. The motion to dismiss is denied.

When, as here, a citizenship claimant establishes his birth in the United States the burden is upon the Government to prove by clear, convincing and unequivocal evidence the act it relies upon to show expatriation. *Nishi-*

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[3] Declaratory Judgment Act of June 14, 1934, 48 Stat. 955, as amended, 28 U.S.C. 2201. Administrative Procedure Act of June 11, 1946, 60 Stat. 237, as amended, 5 U.S.C. 1001.

kawa v. *Dulles*, 356 U.S. 129, 133. We think the Government has met this burden. In 1951 when the plaintiff went abroad it was for a limited period. On December 29, 1952, he accepted a position at the Harvard Medical School to begin the latter part of 1953, and indicated that he had made arrangements for prior transportation to the United States. His intention to return to this country was steadfast until he learned shortly after January 31, 1953, that the school authorities felt that they could not [fol. 43] declare him "essential" for teaching, and that he probably would be drafted. He wrote them on February 10, 1953, that until he heard "something definite" from the draft board he was "reluctant to take a decision that may prove to be foolish or premature." On February 9, June 4, and July 3 in 1953 the draft board sent him notices to report for physical examination, and thereafter ordered him to report for induction on September 14, 1953. The plaintiff made no response or compliance but remained abroad. We are convinced that his purpose was to avoid service in the armed forces.

The only question left in this case is the constitutionality of the law under which the Government maintains that the plaintiff was divested of his citizenship.

At the threshold of this issue we are faced with the decision of the Supreme Court in *Trop* v. *Dulles*, 356 U.S. 86. There Trop, the plaintiff, had been a private in the United States Army, serving in French Morocco. A general court-martial had convicted him of desertion and sentenced him to three years at hard labor, forfeiture of all pay and allowances and a dishonorable discharge. Some years after his return to the United States he applied for a passport. It was denied on the ground that by reason of his conviction and dishonorable discharge for wartime desertion he had lost his citizenship under the provisions of Section 401(g) of the Nationality Act of 1940, as amended.[4] Trop sued for a judgment declaring him to be

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[4] 54 Stat. 1168, 1169, as amended, 58 Stat. 4, 8 U.S.C. 1481(a)(8):

"A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

* * * * *

"(g) deserting the military or naval forces of the United

a citizen. The issue was whether his expatriation for desertion in war time comported with the Constitution. The Government's motion for summary judgment was [fol. 44] granted and the Court of Appeals for the Second Circuit affirmed. But the Supreme Court reversed, holding Section 401(g) unconstitutional, Mr. Justice Frankfurter, Mr. Justice Burton, Mr. Justice Clark and Mr. Justice Harlan dissenting.

The concept of the Chief Justice's opinion in *Trop*, in which three of his colleagues concurred, is that the purpose of Section 401(g) is "punishment" of a convicted deserter and hence, that "the statute is a penal law", P. 97, and that even if "it is assumed that the power of Congress extends to divestment of citizenship" the use of such divestment as punishment is barred by the Eighth Amendment's prohibition against cruel and unusual punishment. Pp. 99, 101. A fifth member of the Court, Mr. Justice Brennan, agreed that Section 401(g) is beyond the power of Congress, but on the ground that "the requisite rational relation between this statute and the war power does not appear . . . ." P. 114. The rationale of the dissenting opinion in *Trop* is that "Congress was calling upon its war powers when it made such desertion an act of expatriation", P. 121, that expatriation under the Nationality Act is not "punishment" in any valid constitutional sense, that "because denationalization was attached by Congress as a consequence of conduct that it had

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States in time of war, provided he is convicted thereof by court martial and as the result of such conviction is dismissed or dishonorably discharged from the service of such military or naval forces: *Provided*, That, notwithstanding loss of nationality or citizenship or civil or political rights under the terms of this or previous Acts by reason of desertion committed in time of war, restoration to active duty with such military or naval forces in time of war or the reenlistment or induction of such a person in time of war with permission of competent military or naval authority, prior or subsequent to the effective date of this Act, shall be deemed to have the immediate effect of restoring such nationality or citizenship and all civil and political rights heretofore or hereafter so lost and of removing all civil and political disabilities resulting therefrom. . . ."

elsewhere made unlawful, it does not follow that denationalization is a 'punishment,' any more than it can be said that loss of civil rights as a result of conviction for a felony . . . is a 'punishment' for any legally significant purposes", P. 124, and that the legislation "is the result of an exercise by Congress of the legislative power vested in it by the Constitution . . . ." P. 128.

While the provision involved in *Trop* and the provision here in question are not the same, the Chief Justice pointed out that they are "essentially" alike. P. 93. The former decrees that conviction and dishonorable discharge for desertion in war time give rise to loss of citizenship. The latter decrees such loss for departing from or remaining outside the United States to avoid service in the armed forces during war time of a period of national emergency. The principal opinion in *Trop* comments at pages 93-94 on Section 401(j)—the provision involved here but now known as Section 349(a)(10)—as follows:

> "This provision was also before the Court in *Perez*, . . . but the majority declined to consider its validity. [fol. 45] While section 401(j) decrees loss of citizenship without providing any semblance of procedural due process whereby the guilt of the draft evader may be determined before the sanction is imposed, Section 401(g), the provision in this case, accords the accused deserter at least the safeguards of an adjudication of guilt by a court-martial."[5]

We perceive no substantial difference between the constitutional issue in the *Trop* case and the one facing us.[6]

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[5] In *Perez* v. *Brownell*, 356 U.S. 44, the petitioner had been declared to have lost his citizenship under Section 401(e) as well as under Section 401(j) of the Nationality Act of 1940. He claimed that both of the sections were unconstitutional. The Supreme Court held in its majority opinion that Section 401(e), which provided for loss of nationality by voting in a foreign election, was constitutional as a reasonable exercise of the power of Congress to deal with foreign affairs. In view of this holding, the Supreme Court did not find it necessary to consider also the constitutionality of Section 401(j).

[6] In the case of *Mendoza-Martinez* v. *Mackey*, 9 Cir., 238 F.2d 239, the Court of Appeals affirmed a decision of the District Court

The Court's ruling there is controlling here. Otherwise, Judge Tamm and I, for reasons expressed in the dissenting opinion, would uphold the validity of the provision under which the plaintiff was declared to have lost his citizenship. We all conclude that subdivision 10 of Section 349(a) of the Immigration and Nationality Act of 1952 is unconstitutional.

Accordingly the motion of the plaintiff for summary judgment is granted and that of the defendant is denied.

/s/ Henry W. Edgerton
United States Circuit Judge

/s/ Edward A. Tamm
United States District Judge

/s/ Burnita Shelton Matthews
United States District Judge

upholding the constitutionality of Section 401(j). The Supreme Court granted certiorari and remanded the cause to the District Court, 356 U.S. 258, for reconsideration in the light of *Trop*. On remand the District Court held that Section 401(j) is unconstitutional. Direct appeal was then made to the Supreme Court which noted probable jurisdiction, 359 U.S. 933, and again remanded to the District Court on a collateral issue unrelated to the constitutional question. *Mackey* v. *Mendoza-Martinez*, 362 U.S. 384

[fol. 46] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 868-60

JOSEPH HENRY CORT, PLAINTIFF

v.

CHRISTIAN A. HERTER, Secretary of State, DEFENDANT

JUDGMENT—October 25, 1960

This case having come before the Court on cross-motions for summary judgment, and the Court having considered the evidence and memoranda filed by the parties and having heard counsel in open court, and finding that there is no material issue of fact and that the plaintiff is entitled to summary judgment as set forth in the opinion of this Court of October 11, 1960, it is by the Court this 25th day of October, 1960,

ORDERED, ADJUDGED and DECREED:

1. That the plaintiff, Joseph Henry Cort, is declared to be, and to have been since his birth, a citizen of the United States of America and to be entitled to all the rights and privileges of a citizen of the United States.

2. That the statute, Section 349(a)(10) of the Immigration and Nationality Act of 1952, 66 Stat. 163, 267-268, 8 U.S.C. 1481(a)(10), is unconstitutional.

3. That the certificate of loss of nationality issued by the defendant to the plaintiff on the ground that the plaintiff has expatriated himself and the defendant's decision to that effect are hereby declared to be null and void.

4. That the defendant, Christian A. Herter, Secretary of State, his officers, servants, employees, and attorneys, and all persons in active concert or participation with them be, and they hereby are, enjoined from withholding [fol. 47] from the plaintiff a United States passport on

the ground that he is not a citizen, or otherwise denying him any of the rights and privileges of a citizen of the United States, on the ground that he is not a citizen.

s Henry W. Edgerton
United States Circuit Judge

s Edward A. Tamm
United States District Judge

s Burnita Shelton Matthews
United States District Judge

No objection as to form:

s Harold D. Rhynedance, Jr.
Assistant United States Attorney

[fol. 48] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C. A. No. 868-60

JOSEPH HILNEY CORI, PLAINTIFF

v.

CHRISTIAN A. HERTER, Secretary of State, DEFENDANT

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES * — Filed Nov. 1, 1960

I. Notice is hereby given that the above named defendant appeals to the Supreme Court of the United States from the judgment of the district court, entered on October 25, 1960, declaring the plaintiff to be a citizen of the United States and enjoining the enforcement of Section 349(a)(10) of the Immigration and Nationality Act of 1952, on the ground that Section 349(a)(10) is unconstitutional.

This appeal is taken pursuant to 28 U.S.C. 1253.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The Complaint for Declaratory Judgment and Injunctive Relief, dated March 23, 1960.

2. The Plaintiff's Motion for Summary Judgment, together with the Affidavit of Plaintiff and Statement Under Rule 9 of the Local Civil Rules.

3. The Plaintiff's Request for a Three-Judge Court.

* This second notice of appeal is filed to correct the statement as to the date of entry of the judgment of the District Court. Thus the date of the judgment of the District Court is shown herein to be October 25, 1960 rather than October 21, 1960 as was stated in the notice of appeal heretofore filed on October 27, 1960.

(fol. 49) 4. The Defendant's Opposition to Plaintiff's Request for a Three-Judge Court and Request for Hearing Thereon, dated May 2, 1960.

5. The Defendant's Motion to Consolidate, dated May 2, 1960.

6. The Defendant's Motion to Dismiss, dated May 2, 1960.

7. The Order of Judge Matthews denying the Defendant's Motion to Dismiss and Consolidated.

8. The Answer, dated July 22, 1960.

9. The Amended Answer, dated September 14, 1960.

10. The Defendant's Motion for Summary Judgment or, In The Alternative, to Remand to the Department of State, dated September 2, 1960.

11. The Supplement to Defendant's Motion for Summary Judgment, dated September 9, 1960.

12. Defendant's Exhibits A, B, C, D, E, F, G, H, and I.

13. Defendant's Statement Pursuant to Local Civil Rule 9.

14. The Opinion of the District Court for the District of Columbia dated October 11, 1960.

15. Judgment, entered October 21, 1960.

16. Docket Entries.

17. This Notice of Appeal.

III. The following questions are presented by this appeal:

A. Whether the district court has jurisdiction of an action seeking a declaratory judgment of United States nationality and injunctive relief brought by a person residing abroad who claims that he has been denied a right as a United States national, or whether the exclusive remedy is under Section 360 (b) and (c) of the Immigration and Nationality Act of 1952.

B. Whether Congress has constitutional power to provide in Section 349 a(10) of the Immigration and Na

[fol. 50] tionality Act of 1952 that a United States national shall lose his United States citizenship by departing from or remaining outside the jurisdiction of the United States in time of war or national emergency for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.

s/ Oliver Gasch
United States Attorney

Certificate of Service (omitted in printing).

[fol. 51] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER RE EXHIBITS—NOV. 21, 1960

The Clerk of this Court is hereby ordered to transmit the original exhibits in the above-entitled cause to the Supreme Court of the United States in connection with the appeal filed by the defendant.

s/ Burnita Shelton Matthews
Judge

Certificate of Service (omitted in printing)

Mod. 52 CIVIL DOCKET

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DOCKET ENTRIES

Number 868-60

Parties

JOSEPH HENRY GORI

v.

CHRISTIAN A. HERTER, Secretary of State

Attorneys Forer and Rein
711 14th St., N.W.

Oliver Gasch
John F. Doyle
Harold Rhyndance
U.S. Atty's Office

Action For

DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Date 1960	*Account*
Mar. 23	Forer; Rec'd. 10.00
Mar. 23	U. S. Treas.: Disb'd. 10.00
Fol. 53	

Date 1960	*Proceedings*
1960	Deposit for cost by
Mar. 23	Complaint, appearance; filed
Mar. 23	Summons, copies (3) and copies (3) of Complaint, issued; Ser. 3-24-60; Atty Gen ser. 3-24-60, U.S. Atty ser. 3-23-60

Date	*Proceedings*
1960	
Apr. 26	Motion of pltff for preliminary injunction, P&A; Affidavit; c ser 4-26-60; filed
Apr. 26	Motion of pltff for summary judgment; P&A; Affidavit, Statement ser ack 4-26-60; filed
Apr. 26	Request by pltff for a three judge court; ser akn 4-26-60; filed
May 2	Motion of deft to consolidate with C.A. 777-60 & 324-60; P&A; c m 5-2-60; M.C. 5-2-60 (original filed in C.A. 777-60); filed
May 2	Motion of deft to dismiss; P&A; c m 5-2-60; M.C. 5-2-60; Appearance of Oliver Gasch, John F. Doyle & Harold Rhyndance; filed
May 2	Motion of deft for extension of time to oppose pltff's motion for summary judgment; P&A; c m 5-2-60; M.C. 5-2-60; filed
May 2	Opposition of deft to pltff's request for a three judge court & deft's request for hearing thereon; c/m 5-2-60; filed
May 3	Opposition of deft to Motion for preliminary injunction; c m 5-3-60; filed
May 6	Opposition of pltff to deft's motion to dismiss; c/m 5-6-60; filed
May 10	Memorandum by deft in reply to pltff's memorandum of P&A's in opposition to defts motion to dismiss; c m 5-10-60; filed
May 16	Supplement to defts' (1) opposition to pltffs' application for a three judge court & (2) memorandum in reply to pltffs P&A's in opposition to defts motion to dismiss; c m 5-16-60; filed
May 18	Application of pltff for convening of a three judge court heard & taken under advisement. (Rep. Ida Z. Watson) Matthews, J.
July 13	Order denying deft's motions to dismiss and to consolidate this cause with C.A. 324-60 and C.A. 777-60; (N) Matthews, J.
July 13	Notice to Chief Judge of the United States Court of Appeals for District of Columbia to designate a three-judge court; (N) Matthews, J.

Date	Proceedings
1960	
July 19	Order denying deft's motion to dismiss in C.A. 324-60 & C.A. 777-60; that deft's motion in C.A. 324-60 & C.A. 777-60 to consolidate is granted except as to C.A. 868-60; denying applications of pltffs. Schneider & d'Arbeloff Guerfieri to convene a three-judge court. (original filed in C.A. 777-60) (N) Matthews, J. [fol. 54]
July 20	Order designating Henry W. Edgerton, U.S. Circuit Judge and Edward A. Tamm, U.S. District Judge to serve with Burnita Shelton Matthews, U.S. District Judge as members of a three-judge court (Signed July 18, 1960) (N) Edgerton, J.
July 22	Answer of deft to complaint; c m 7-22-60; filed
July 22	Calendared (N)
Aug. 15	Amended answer; c m 8-8-60; filed
Sep. 3	Withdrawal of deft's motion for extension of time to oppose pltf's motion for summary judgment, per atty for deft; filed
Sep. 3	Motion of deft for summary judgment or in alternative to remand to Department of State; statement under Rule 9; P&A; annex A; exhibits A-H; c m 9-2-60. MC 9-3-60; filed
Sep. 9	Supplement of deft to motion for summary judgment or in the alternative to remand; c m 9-9-60; exhibit 1; filed
Sep. 9	Supplement of deft to memorandum of P&As in support of motion for summary judgment or in alterhative to remand; c m 9-9-60; exhibit; filed
Sep. 12	Points and authorities in support of motion for summary judgment and for preliminary injunction and opposition to deft's motion for summary judgment and to dismiss; filed
Sep. 12	Motion of pltf for summary judgment and for preliminary injunction and motion of deft for summary judgment argued and submitted; Judges Edgerton, Matthews and Tamm. (Rep. Elaine Wells)

Date	*Proceedings*
1960	
Oct. 11	Memorandum opinion granting plaintiff's motion for summary judgment and denying defendant's motion for summary judgment. (N) Judges Edgerton, Matthews and Tamm.
Oct. 20	Motion of deft for stay pending appeal; P&A; c/m 10-20-60; M.C. 10-20-60; filed
Oct. 21	Motion of deft for stay of summary judgment pending appeal argued & granted. Edgerton, Tamm and Matthews, J.; filed
Oct. 25	Order granting motion of pltff for summary judgment; declaring pltff to be a citizen of the U. S.; declaring Section 349 (a) (10) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1481 (a) (10)) to be unconstitutional; voiding certificate of loss of nationality; and enjoining deft from withholding from plaintiff
[fol. 55]	a United States passport. (N) Edgerton, Tamm, Matthews, J.
Oct. 25	Order staying effect of above order until notice of appeal is filed and for thirty days thereafter. (N) Edgerton, Tamm, Matthews, J.
Oct. 27	Notice of appeal by deft to Supreme Court of the United States from order 10-21-60; c m 10-27-60; filed
Nov. 1	Notice of appeal by deft to the Supreme Court of the United States from order 10-25-60; c m 11-1-60; filed
Nov. 21	Order Transmitting Original Exhibits in this cause to the Supreme Court of the United States in connection with the Appeal previously filed. (N) Matthews, J.

[fol. 56] Clerk's Certificate to foregoing transcript omitted in printing

[fol. 57] SUPREME COURT OF THE UNITED STATES.

No. 567, October Term, 1960

CHRISTIAN A. HERTER, Secretary of State, APPELLANT

vs.

JOSEPH HENRY CORT

ORDER POSTPONING JURISDICTION—February 20, 1961

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. Forty-five minutes are allowed each side for oral argument.

February 20, 1961

[fol. 58] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 868-60

JOSEPH HENRY CORT, Praha 15, Na Sypcine 3, Prague, Czechoslovakia, PLAINTIFF

v.

CHRISTIAN A. HERTER, Secretary of State, Department of State, Washington, D. C., DEFENDANT

AFFIDAVIT OF PLAINTIFF, JOSEPH HENRY CORT
Filed April 26, 1960

REPUBLIC OF CZECHOSLOVAKIA)
CITY OF PRAGUE) ss.:
EMBASSY OF THE UNITED STATES)
OF AMERICA, CONSULAR SECTION)

JOSEPH HENRY CORT, being duly sworn, deposes and says:

1. I am the plaintiff in the above entitled action.

2. I have read the complaint filed in this action and know the contents thereof. All of the facts alleged in the complaint are true and I incorporate them in this affidavit.

3. I was born in the United States on December 27, 1927. My parents are and at that time were naturalized Americans. I was married on August 20, 1949 to Ruth Mathilde Leyendecker, likewise an American citizen by birth, in Westchester County. We have two children, both American citizens and regularly registered as such at the American embassies abroad.

4. I received an M.D. degree from Yale University [fol. 59] School of Medicine in June 1951 and a Ph.D. degree from the University of Cambridge, England in June 1954.

5. My principal employment and fellowships may be summarized as follows:

1946-1948 Yale University School of Medicine, preclinical years. Research assistant in Dept. of Physiology under Prof. J. F. Fulton.

1948-1949 Henry Fellowship to Cambridge University, England. Studied Mathematics and Physics.

1949-1951 Yale University School of Medicine, clinical years. Research assistant (salaried) in Depts. of Physiology and Medicine under Profs. J. F. Fulton and J. P. Peters.

1951-1953 Research Fellowship from the National Foundation for Infantile Paralysis, Inc. at the Dept. of Experimental Medicine, Cambridge University, England under Prof. R. A. McCance.

1953-1954 Senior Lecturer (equivalent to Assistant Professor) in Physiology, University of Birmingham, England.

1954- Senior Scientific Research Worker, Institute for Cardiovascular Diseases, Prague.

A detailed statement of my educational background, employment, writings and biographical material is set forth in my "Application for Appointment as a Commissioned Officer in the United States Public Health [fol. 60] Service," executed on August 29, 1959 and annexed hereto as Exhibit A.

6. This action arises as a result of the defendant's refusal to issue me a passport upon the ground that I had lost my citizenship by remaining abroad for the purpose of avoiding my obligations under the Selective Service laws.

7. The complaint states what I have repeatedly set forth under oath, that I did not depart from the United States or remain abroad for the purpose of avoiding my military service obligations. In addition to the facts set forth in the complaint, which I have incorporated herein, I desire to call additional facts to the attention of the Court in the subsequent paragraphs.

8. No question has been raised with respect to my reasons for leaving the United States in 1951. They should however be set forth here as a necessary background to

the later events and explanation of the reasons for my actions and inactions.

9. I was called up under the original wartime Draft Law in 1946, examined and classified as 4-F. I reregistered under the 1948 Draft Law in 1949 and was classified 3-A. I was also registered at Draft Board No. 10, New Haven, Connecticut on May 25, 1951 under the Doctors Draft Act.

10. I had no reason to believe in 1951 that I would be drafted in the light of the physical disabilities indicated in my Record of Induction, a copy of which is annexed hereto as Exhibit E. It will be noted that my medical [fol. 61] history included "Residual poliomyelitis, residual tuberculosis, dangerous allergy, marked myopia, demonstrable lesions."

11. I had paid one visit to Europe prior to my departure in 1951. In 1948 I was offered the position of a Henry Fellow at Clare College, University of Cambridge, England. I received a United States passport on June 1, 1948 which was subsequently renewed on June 19, 1950. I studied at the University of Cambridge from September, 1948 to June, 1949, returning to the United States where I worked as a research assistant in the departments of physiology and medicine at Yale University School of Medicine.

12. The purpose of my leaving for Europe in 1951 was to accept a position as a Research Fellow at the University of Cambridge, England. This was a fellowship given by the National Foundation for Infantile Paralysis, an American organization. Although the Doctors Draft Act had been passed, the effective date for registration under it had not occurred. Accordingly, I consulted Dr. Samuel Harvey, now deceased, the Yale University Advisor on the draft. I was told that I could register in advance under the draft and that I could leave the United States for purposes of accepting the fellowship. Accordingly, I registered under the draft and left the United States on May 29, 1951 with my wife. I was thereafter employed at the University of Cambridge in its Department of Experimental Medicine where I did research, and acted as an official tutor from June 1951 to May 1953.

[fol. 62] 13. While at the University of Cambridge I was offered the position as lecturer in physiology at the University of Birmingham, England. I accepted that position which was intended to be of permanent duration and began employment in May 1953. My employment was terminated in July 1954 under the circumstances set forth below. None of the foregoing work or travels was motivated by any desire to avoid my Selective Service obligations. As indicated above, I had not only registered for the draft prior to the effective date but I had gotten clearance from the Advisor at Yale University.

14. Shortly after my arrival in England, the American Embassy wrote me several letters requesting me to deliver my passport to it to be made valid "only for return to the United States." Attached are its letters of November 28, 1951, December 10, 1951 and December 27, 1951, as Exhibits C, D and E.

15. Upon information and belief such letters were sent to hundreds of Americans residing abroad and elsewhere whose past political associations were disapproved of by the Department of State. I am advised and believe that the American Embassy in London was a prolific source of such letters. At the time these letters were sent there were no State Department regulations setting forth standards for the denial or withdrawal of passports for political reasons. Such standards and procedures implementing them were first promulgated by the Department on August 28, 1952 and declared unauthorized by law almost six [fol. 63] years later in *Kent and Briehl* v. *Dulles*, 357 U. S. 116, by the United States Supreme Court.

16. The effect of these letters from the American Embassy was to prevent me from traveling outside Great Britain, to make it clear to me that at least one branch of the United States Government was engaged in persecuting individuals for their political associations and that I was one of those individuals. I did not respond to the Department's demands because I believed that they were unlawful and I did not wish to subject myself to this and similar forms of political persecution then prevalent in the United States. As indicated briefly in this and the next two paragraphs, I was engaged in important

research and teaching work in physiology and I desired to continue earning a livelihood for my family.

17. I was indicted on December 17, 1954, by a federal grand jury in the District of Massachusetts for having "unlawfully and knowingly failed and neglected to report for induction." A copy of the indictment is annexed hereto as Exhibit F.

18. My fears were reaffirmed then and later by the activities of the House Committee on Un-American Activities, herein referred to as the Committee. I was of course aware of that Committees' operations generally. Then, in the Spring of 1953 it came to my attention that some of my former colleagues at Yale had been subpoenaed by the Committee and asked questions concerning me and others described by the Committee's counsel as persons [fol. 64] who "were members of a student group of the Communist Party at Yale University." (Hearings before the Committee on Un-American Activities, House of Rep., 83rd Cong., 1st Sess., April 23, 1953, p. 1129). I was also aware of the implications of the decision of the United States Supreme Court in *Dennis* v. *United States*, 341 U. S. 494. On June 4, 1951, subsequent to my departure for Europe, the Court had upheld the constitutionality of the Smith Act, 54 Stat. 671.

19. These occurrences, as appears below, rather than the question of military service, were the basis of my decision to continue my medical research and teaching in England despite the receipt of a local Selective Service Board notice to report to Brookline, Massachusetts for induction. I was of the opinion that this notice was not based upon any desire to have me perform military duties in the armed forces of the United States. Rather, I was convinced that my physical disabilities plus my political disabilities were enough to preclude any desire on the part of the military authorities to employ my services. I had been a member of the Communist Party at Yale from December 1946 to May 1951 (with the exception of August 1948 to July 1949 when I was in England), a fact known, of course, to the government security agents and known even to the House Committee on Un-American Activities. My views as to the Government's intention in

serving me with these notices was colored too by the investigations of the Army and other governmental branches by Senator Joseph McCarthy.

[fol. 65] 20. I consulted an eminent English solicitor, Mr. Samuel Silverman, M.P., who advised me that under English and international law I was not legally required to respond to the said notices so long as they were transmitted to me while I was on English soil.

21. I remained at my post in Birmingham, continuing to do the work which I had contracted to do until 1954 when the English government refused to renew my permit to remain. During the several months prior thereto the United States Government, upon information and belief, had put pressure upon the British Government to deport me. I was therefore actively engaged in seeking employment in some other country where I would not be subjected to restrictions upon my liberty of movement through investigation by legislative committees for past political associations and for possible criminal prosecution for the same reason. I sought such employment in Israel and India, when the first formal offer came from the Cardiovascular Institute in Czechoslovakia, which I thereupon accepted.

22. From 1954 to date I have been employed at the Institute as a Senior Scientific Research Worker doing much the same work as I had previously done. During this entire period of my employment in Czechoslovakia I have endeavored to retain my ties to the United States through family, friends and scientific acquaintances. I have not committed a single act which could properly be characterized as disloyalty to the United States nor have I engaged in any conduct indicating a transfer of allegiance. I have not voted in elections in Czechoslovakia, [fol. 66] have not joined its military forces and have not taken any oath of allegiance to its government. I have not occupied any position which is open only to its nationals nor have I exercised the rights of a Czechoslovakian national.

23. My wife is likewise not engaged in any conduct which might suggest a lack of allegiance to the United States or a transfer of allegiance to a foreign country.

We have registered our two children as citizens to the American Embassy and taught them English. My wife has secured and used an American passport. Our parents and their other children are all American citizens, all residing in the United States.

24. In 1959 my wife came to the United States for two reasons:

(1) to be examined and treated for an illness diagnosed abroad and unsatisfactorily treated there as multiple sclerosis, and

(2) to seek to make arrangements with my counsel, Mr. Leonard B. Boudin, whom I had retained in December 1958 and the various government agencies involved for my return to the United States and the fulfilment of my Selective Service obligations.

25. In pursuance of the first objective my wife met with various physicians and secured their diagnoses and treatment. She was unable to continue their treatment in the United States, despite medical advice to that effect, because of the need to return to her family in Czechoslovakia which she did in the Fall of 1959.

[fol. 67] 26. In pursuance of the second objective my wife and Mr. Boudin met with representatives of the Department of Justice and were advised that it was the policy of the Department to dismiss the indictments against draft delinquents where they sought, although belatedly, to carry out their obligations under the Selective Service laws. I wish to make it perfectly clear that no commitment was made by the Government that this policy would necessarily be followed in my case. It was suggested by the Department of Justice that the matter be discussed with officers of the Selective Service System.

27. Accordingly my wife and Mr. Boudin on July 23, 1959 met with Major Alexander Nuta, Assistant General Counsel of the Selective Service System and thereafter with General Hershey, the Director of the Selective Service System. Again, I wish to emphasize that no commitments were made by the Selective Service System. General Hershey did however state definitely that the most reasonable method of seeking to comply belatedly with my Selective Service obligations would be an application to

the United States Public Health Service. He had considerable doubt that the Army would accept me or believed that it would have accepted me in 1953 in view of the political and physical disabilities referred to above. I annex hereto as Exhibits G through O the principal correspondence of my counsel with the Selective Service System on the subject.

28. On September 21, 1959, following meetings which my wife had had with the United States Public Health [fol. 68] Service my counsel filed an application for a commission on my behalf, a copy of which is attached hereto as Exhibit A. A copy of the correspondence on the subject is annexed hereto as Exhibits P through V.

29. On September 3, 1959 I wrote to the Chief of the Office of Procurement Program at the Headquarters of the First United States Army, Governors Island, seeking information as to the availability of a United States Army internship. On September 15th I received a reply from the Army indicating that I would have to return to the United States for further information; copies of these letters are annexed hereto as Exhibits X and Y.

30. I did not apply for induction into the Armed Forces since, as appears above from Exhibit L, such an application cannot be made to a local Selective Service Board where there is a pending indictment.

31. I had been advised by the Public Health Service that it would be necessary for me to appear personally for the final processing of the application on December 1, 1959. I therefore directly and through counsel expeditiously took all steps necessary to secure my return to the United States, including the following:

(a) On April 7, 1959 I filed an application for a passport at the American Embassy in Prague. A copy of this application is annexed hereto as Exhibit Z.

(b) Subsequently in response to the request of the Consul I executed on August 24, 1959 an "Affidavit by native or naturalized American to explain protracted residence abroad." This is part of Exhibit Z.

[fol. 69] On August 24, 1959, I also executed an affidavit including a supplementary explanatory statement explaining that my residence abroad was not for the pur

poses of avoiding military obligations. This too is part of Exhibit Z.

32. In connection with this document I respectfully call the Courts' attention to the document attached as part of Exhibit Z, entitled "Opinion of Officer taking Affidavit." This is the opinion of Mr. John M. Dennis, the American Consul at Prague, who interviewed me, in which he states in the language set forth in paragraph 15 of the complaint that the American consul was of the opinion that I had not remained abroad for the purpose of avoiding the draft and therefore that I had not lost my American citizenship.

33. My wife and Mr. Boudin met in the Summer and Fall of 1959 with numerous officials of the States Department for the purpose of facilitating the issuance of a passport to me. They urged the need for speed in the Department's action because of my wife's health and the need to process my application to the Public Health Service by December 1, 1959. In one such conversation the Department reported an informal opinion of the General Counsel of the Selective Service System that mine was a case of serious delinquency under the Selective Service laws. My counsel thereupon wrote the letter annexed hereto as Exhibit AA and dated October 14, 1959. This merely resulted on October 16, 1959 in a telegram from the Chief of the Foreign Operations of the Passport Office, [fol. 70] annexed hereto as Exhibit BB, disapproving the application for a passport on the ground of my alleged expatriation on September 14, 1953.

34. At the request of my counsel the Department facilitated hearings before its Board of Review on the Loss of Nationality and such hearings were held on October 28, 1959. The hearing consisted of an oral argument by Mr. Boudin together with the formal documents such as the application for passports and correspondence with the various government agencies involved. Subsequently Mr. Boudin transmitted to the Board a copy of the statement made by me on October 23, 1959, which is annexed hereto as Exhibit CC. No evidence was submitted to the Board of Review on the Loss of Nationality to show that I had remained abroad for the purpose of avoiding my obligations under the Selective Service laws.

35. I shall submit at the time of any motion in this case the transcript of the proceedings before the Board of Review on the Loss of Nationality.

36. Although this hearing was held on October 28, 1959 and I and my counsel repeatedly emphasized the necessity of a decision before December 1st by reason of the need to be physically present in the United States, the decision was not rendered until February 10, 1960. A copy of the decision, adverse to me, is annexed hereto as Exhibit DD.

37. On November 2, 1959, prior to my knowledge of the Board's decision, I filed a statement with the American Embassy in Prague, a copy of which is annexed hereto as Exhibit EE.

(fol. 71) 38. Further difficulty subsequently arose with respect to the Public Health Service. On November 6, 1959 both I and my wife received letters rejecting our applications for employment in the Public Health Service. My counsel wrote to the Public Health Service on November 17, 1959 inquiring as to the reasons for the rejection. In reply the Department declined to answer the questions put by my counsel and indicated the unavailability of any method for administrative review. This correspondence appears in Exhibits T through U.

39. I have been denied a passport on the ground that I expatriated myself under 349 (a) (10) of the Immigration and Nationality Act of 1952, by remaining abroad for the purpose of avoiding the draft. No evidence has ever been presented to me, nor so far as I know to any governmental authority, to support this conclusion as to my reasons for remaining abroad. All that the government has ever relied upon as far as I know is the statutory presumption in 349 (a)(1) that:

> "Failure to comply with any provision of any compulsory service laws of the United States, shall raise the presumption that the departure from or absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States."

I have challenged the constitutionality of such a presumption in the proceedings before the Board of Review

on the Loss of Nationality and I maintain the same position in this litigation. I am further advised by counsel and believe that the statutory presumption arises only [fol. 72] after there has been a judicial determination—perhaps only in a criminal proceeding—that there has been a "failure to comply with any provision of any compulsory service laws." And administrative agency such as the State Department cannot make an adjudication of such a "failure to comply." It certainly has not made such an adjudication in the administrative proceedings which underlay the present lawsuit.

40. The "failure to comply" depends upon a multiplicity of legal considerations which may very well be raised at any criminal trial if I am ultimately prosecuted under the indictment. These include such matters as:

(a) The validity of service by reason of principles of extraterritoriality.

(b) The *bona fides* of the induction order.

(c) Whether I can be said legally to have been in a position to respond to the order in view of the immobility created by the denial of passport facilities to me.

(d) The effect of my reasonable reliance upon legal opinion.

(e) Whether by reason of physical and political disabilities I would ever have been eligible for military induction.

I mention these factors because they indicate that such a "failure to comply" cannot be determined in the present case and therefore that the statutory presumption cannot apply.

[fol. 73] 41. However if such a presumption were held to apply notwithstanding the matters set forth in the paragraph next above I submit that I have overcome such a presumption by my affidavits and my other statements made as part of the passport application as to the reasons for my remaining abroad. I think it abundantly clear from what I have said that I remained abroad because of fears, true or unfounded, as to the possibilities of political persecution and not because of an unwillingness to serve in the Armed Forces of my country.

42. I seek an adjudication that I am an American citizen because the United States is the country of my birth and the only country to which I have ever and to which I do today have allegiance. If it should be determined that I am not an American citizen, then I am a citizen of no other country and I am therefore stateless. I need not set forth here the psychological, material and political consequences of statelessness in the modern world.

43. I also desire a declaration of nationality because as incident thereto I shall be able to secure through this Court a United States passport. This will restore to me one of the basic rights of an American citizen of which I have been deprived for nine years on the basis of departmental policies now finally adjudicated by the Supreme Court to be and to have been illegal.

44. I seek also relief of the kind referred to above because I desire to return to the country of my birth and to live and work here in the United States as an [fol. 74] American citizen. I want to live and bring up my children in the United States. I want them to carry out their obligations and to exercise their rights of citizenship.

45. I want also to carry out my duties of citizenship including the performance of my obligations under the Selective Service laws. Like many other persons in the last decade I foresaw an endless period of increasing political persecution, which I am happy to say has not materialized. I was wrong in my forebodings and I and my family have materially suffered as a result. I can only say to the extent that a self serving declaration like this has value that I honestly believed in the position that I took as reflected in the exhibits attached to this affidavit. Such a belief was sincerely held by many thousands of Americans and was indeed reflected in many dissenting opinions of the courts, including the Supreme Court of the United States.

46. I desire to return to the United States for the purpose of responding to the indictment. This has been the subject of discussions between my counsel and the Attorney General's office as well as the office of the United States Attorney for the District of Massachusetts. It is

of course my hope that the indictment will be dismissed in accordance with the government's policy as set forth above in paragraph 26. Alternatively it is my hope that it would be dismissed for other reasons, some of which are set forth in paragraph 40 above. But whether it is dismissed or whether I am to be tried upon it, I have for more than a year now sought in every way to return to the United States for the purpose of facing the charges set forth in the indictment.

[fol. 75] 47. Finally, I wish to return to the United States as an American citizen in order that my wife can have the medical treatment afforded by laboratories and hospitals in the United States for her illness. Neither she nor I wish to have our family broken up by my remaining in Prague while she and the children return to the United States without me. The reasons for this feeling are obvious and need not be further stated here.

/s/ Joseph Henry Cort
Joseph Henry Cort

Subscribed and sworn to before me this 5th day of April 1960

[SEAL]

/s/ Robert W. Kent Jr.
Robert W. Kent Jr.

Vice Consul of the United States of America,
duly commissioned and qualified.

Service No. 316
Tariff item No. 45
Fee Paid: U. S. $2.50

Local Cy. Equiv.: 36.00 Cz. Cr.

[fol. 76] PLAINTIFF'S EXHIBIT A

✓ Plaintiff's Exhibit A

ACT

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
PUBLIC HEALTH SERVICE

Form approved
Budget Bureau No. 68-R104

APPLICATION FOR APPOINTMENT AS A COMMISSIONED OFFICER IN THE UNITED STATES PUBLIC HEALTH SERVICE
ACTIVE DUTY OR INACTIVE STATUS FUNDS TO CALL TO EXTENDED ACTIVE DUTY*

Type or print your application properly. Read instructions on page 4. Answer ALL questions. If any are not applicable, so state. Submit THREE copies to the Surgeon General, Public Health Service, Washington 25, D. C. Attention: Division of Commissioned Personnel. Personal information may be used at later date for other purposes.

If more space is required for answering or furnishing details on any question in this form, submit the additional information by attaching 8 x 10½" sheets. Place your name, address and the question number on each attached sheet.

TYPE OF COMMISSION FOR WHICH YOU ARE APPLYING (Information required ONLY if recommended)

☒ REGULAR (Applies to career appointment)

☐ RESERVE (Officer Corps reserved active duty in the Commissioned Reserve)

FOR USE OF THIS BRANCH

☐ 1A ☐ 1 ☐ 1A

☐ 2 ☐ 2 ☐ 2A

FULL NAME (Last Name)	(First Name)	(Middle Name)	DATE OF BIRTH	AGE
CORT	Joseph	Neary	Dec. 27, 1927	31

OTHER NAMES USED (Maiden name, nickname, or name changed legally or otherwise. Give explanation on reverse side and show dates used.)

PLACE OF BIRTH (City and State, or Foreign Country)

HEIGHT 6'2"

WEIGHT 170 lbs.

none

Boston, Mass.

TITLE OF PROFESSION (e.g. Doctor, Nurse, Engineer)

Physician, Research Physiologist

SEX ☐ MALE ☐ FEMALE

MARITAL STATUS ☐ SINGLE ☒ MARRIED ☐ WIDOWED ☐ DIVORCED

IF MARRIED, WIDOWED OR DIVORCED, GIVE FULL NAME AND DATE AND PLACE OF BIRTH OF SPOUSE OR FORMER SPOUSE AND DATE AND PLACE OF MARRIAGE (Include wife's maiden name. Use maiden name regardless of previous marriages.)

Dr. Ruth Mathilde Leyendecker Cort (M.D.), born July 30th, 1925, New York City. Married Aug. 20th, 1949, Westchester County, N.Y. Maiden name, Ruth Mathilde Leyendecker.

PRESENT MAILING ADDRESS (Number, Street, City, Zone, State)

c/o Leyendecker, Box 37, Pelham, N.Y.

LEGAL RESIDENCE (Number, Street, City, Zone, State)

TELEPHONE NO. Pe 8-0587 (And for further notice or report from assigned duty station upon discharge.)

IDENTIFYING NUMBERS (Social Security, armed forces serial or service number, Veterans Administration claim number, passport number, driver's registration number, seaman's certificate of identification or other number)

social security 034-18-3285 Passport (1948-1952) #221544

DATES AND PLACES OF RESIDENCE (Begin with present and go back 10 years)

From	To	Number and Street	City	State
1954	-	3, Na Sypoine	Prague 15	Czechoslovakia
1953	1954	10, West Hill Road	Birmingham 30	England
1952	1953	94, Hartington Grove	Cambridge	England
1951	1952	54, Grantchester Meadows	Cambridge	England
1949	1951	161, York st.	New Haven	Conn.

DATES, NAMES AND ADDRESSES OF EMPLOYERS (Begin with present and go back 10 years)

From	To	Employer	Address
1954	-	Institute for Cardiovascular Research	Prague 14, Czechoslovakia
1953	1954	University of Birmingham (Medical School)	Birmingham 15, England
1951	1953	National Foundation for Infantile Paralysis, Inc., Fellowship at University of Cambridge, Dept. of Experimental Medicine, England	120 Broadway, New York 5, N.Y. Tennis Court Rd., Cambridge, England
1949	1951	Dept. of Medicine, Section of Metabolism Yale University School of Medicine	789, Howard Ave., New Haven, Conn.

ORGANIZATIONS WITH WHICH AFFILIATED (Use end pages. OTHER THAN RELIGIOUS OR POLITICAL ORGANIZATIONS OR THOSE WHICH DEFINE RELIGIOUS OR POLITICAL AFFILIATIONS. Give offices held.)

New York Academy of Sciences, Renal Association (London, England), Royal Society of Medicine (London, England), Sigma Chi (New Haven, Conn. branch), Physiological Society (London, England), Societies of Physiology, Internal Medicine, Biophysics (Prague, Czech.)

INDICATE ANSWERS BY PLACING X IN PROPER COLUMN

	YES	NO
a. [illegible]		X
b. [illegible]	X	
c. [illegible]		X

* If you answer to question A, C, or D is yes, attach an explanatory sheet to be numbered to and made a part of this application. (In answering all such explanations, consecutively number a group of questions and identify each answer by number only. Give complete details of your activities during and since duty or obligations upon which your application is based.)

** If interested in being called to active duty only during national emergency or national interest, or for short periods of active duty training, use short form, PHS-3418

Dr. Ruth Leyendecker Cort	wife	7	30	25	
Nicholas Cort	son	6	26	55	
Susannah Cort	daughter	8	8	57	

EDUCATION

Boston Latin School, Boston 15, Mass.			1938	1944	June, 1944
Harvard College, Cambridge 38, Mass.	Biochem	July 1944	June 1946	26 courses	
Yale University School of Medicine, New Haven 11, Conn.	Medicine	Sept. 1946	June 1948		
"	"	Sept. 1949	June 1951		June M.D. 1951
University of Cambridge, England	Physics Physiol.	1948-9 & VI,1951	June 1953		June Ph.D. 1954

German, Czech	X	X
Polish, Russian, French	X	X
other slavic language	X	

see attached list

New York Academy of Sciences - fellow
Renal Association (U.K.) - member
Sigma Chai - member
Royal Soc. Med. (U.K.) - was a member
Physiol. Soc. (U.K.) - was a member
Med.Res.Soc. (U.K.) - was a member

Sigma Chai
Henry Fellowship (Yale to Cambridge, England)

August, 1954 — Senior Scientific Research Worker — 5

2000 crowns month
3000 " month

Institute for Cardiovascular Research

Prague, 14
Czechoslovakia

desire to return home and fulfill citizen's obligations by service

Dr. Jan Brod, Institute for Cardiovascular Research, Prague 14, Czechoslovakia

lead research team on problems of electrolyte and water metabolism, provide metabolic consults on clinical problems of electrolyte and water metabolism, direct all work with radioactive isotopes in research and practice; develop physical instrumentation, advise on all medical and biological use of radio-isotopes in Czechoslovakia, plan the construction of a National Isotope Institute. Train graduate students, teach in postgraduate courses.

[fol. 78]

DATES OF EMPLOYMENT (Month, Year) — EXACT TITLE OF YOUR POSITION — NUMBER OF PERSONS SUPERVISED

FROM 1953, May TO July, 195- Lecturer in Physiology 3

SALARY OR EARNINGS — KIND OF ORGANIZATION (Educational, Industrial, Government agency, etc.) — PLACE OF EMPLOYMENT

STARTING £1000 PER year University of Birmingham, England CITY Birmingham 15 STATE England

FINAL PER

REASON FOR LEAVING — NAME AND ADDRESS OF MAJOR SUPERVISOR

cancellation of permit to stay in England Prof. H.P. Gilding, Dept. of Physiology The Medical School, Birmingham 15, England

DESCRIPTION OF DUTIES Lecture in physiology and metabolic medicine to medical students. Train graduate students. Carry out research in electrolyte and water metabolism on clinical and animal material, and lead small research team. Organise and run laboratory courses for medical and graduate students.

DATES OF EMPLOYMENT (Month, Year) — EXACT TITLE OF YOUR POSITION — NUMBER OF PERSONS SUPERVISED

FROM June, 1951 TO May, 1953 Research Fellow 2

SALARY OR EARNINGS — KIND OF ORGANIZATION (Educational, Industrial, Government agency, etc.) — PLACE OF EMPLOYMENT

STARTING 4700 PER year University of Cambridge, England Nat. Found, Infant. Paralysis, Inc. CITY Cambridge STATE England

FINAL PER

REASON FOR LEAVING — NAME AND ADDRESS OF MAJOR SUPERVISOR

offered permanent, more senior, position at University of Birmingham Prof. R.A. McCance, F.R.S., Dept. of Experimental Medicine, Tennis Court Rd., Cambridge, England

DESCRIPTION OF DUTIES Carry out research on acidosis and electrolyte and water metabolism in young animals, infants and adult clinical material. Teach advanced students in physiology by lecturing and as an official tutor of the University.

DATES OF EMPLOYMENT (Month, Year) — EXACT TITLE OF YOUR POSITION — NUMBER OF PERSONS SUPERVISED

FROM 1949 TO May, 1951 Research Associate 1

SALARY OR EARNINGS — KIND OF ORGANIZATION (Educational, Industrial, Government agency, etc.) — PLACE OF EMPLOYMENT

STARTING 200 PER month Yale University School of Medicine, New Haven STATE Conn.

FINAL PER

REASON FOR LEAVING — NAME AND ADDRESS OF MAJOR SUPERVISOR

offered research fellowship for further training Prof. L.G. Welt, Dept. of Medicine, Univ. of North Carolina, Chapel Hill, N.C.

DESCRIPTION OF DUTIES Carry out animal research on the effect of adrenal steroids and ACTH on the metabolism of electrolytes and water.

DATES OF EMPLOYMENT (Month, Year) — EXACT TITLE OF YOUR POSITION — NUMBER OF PERSONS SUPERVISED

FROM Sept, 1948 TO June 1949 Henry Fellow -

SALARY OR EARNINGS — KIND OF ORGANIZATION (Educational, Industrial, Government agency, etc.) — PLACE OF EMPLOYMENT

STARTING £600 PER year Clare College, University of Cambridge, England CITY Cambridge STATE England

FINAL PER

REASON FOR LEAVING — NAME AND ADDRESS OF MAJOR SUPERVISOR

return to complete medical education Sir Henry Thirkill, the Master's Lodge, Clare College, Cambridge, England

DESCRIPTION OF DUTIES study advanced courses in physics, physical chemistry and mathematics for application in a future career of research into physiology and biophysics.

[fol. 79]

translator (scientific matter only) translation from Czech, Russian to English 1955 to present

NOTE: Questions 31 and 32 should constitute a complete occupational history. Please explain in an attachment any periods of time not covered above.

FULL NAME	PROFESSIONAL RELATIONSHIP TO APPLICANT	COMPLETE PRESENT ADDRESS (Street & Number)
Prof. Robert Aitken, F.R.S.E.	Vice-chancellor, Univ. Birmingham	The Vice-Chancellor, The University, Edgbaston, Birmingham 15, England
Prof. Josef Charvat	Scientific Council Ministry of Health	IIIrd Clinic of Internal Medicine, Pracne II (Hemocrice, (Charles University)
Prof. Donald H. Barron	former assist. dean Yale Med. School	Dept. of Physiology, Yale University School of Medicine, 333 Cedar st., New Haven 11, Conn.
Prof. Daniel C. Darrow	former teacher and adviser on research	Dept. of Pediatrics, University of Kansas

SELECTIVE SERVICE 34 WERE YOU EVER DEFERRED BY SELECTIVE SERVICE? [X] YES [ ] NO IF YES FROM 1946 TO 1948 REASON residual poliomyelitis, medical school

35 ARE YOU SUBJECT TO THE GENERAL DRAFT? [ ] YES [X] NO 36 ARE YOU SUBJECT TO A SPECIAL DRAFT? [X] YES [ ] NO 37 SELECTIVE SERVICE NUMBER 19 25 27 40

38 DRAFT CLASSIFICATION GENERAL SPECIAL 39 PRIORITY GROUP (Specify) 40 NAME AND ADDRESS OF LOCAL BOARD WHERE REGISTERED Local Board no. 25, Norfolk County, 34 Marion st. Brookline, Mass.

41 HAVE YOU RECEIVED AN ORDER FOR INDUCTION (SSS Form 201)? [X] YES [ ] NO Date order issued by your draft board 1953 Date specified for induction 1953 Is the order for induction under General or Special Draft? general Fill in General or Special

MILITARY SERVICE 42 WERE YOU EVER REJECTED FOR ANY BRANCH OF MILITARY SERVICE? [ ] YES [ ] NO If "Yes" state when and where rejected and reason

43 List below in chronological order all service you have had in the ARMY, NAVY, AIR FORCE, MARINE CORPS, COAST GUARD, AND [illegible] SERVICE (including service performed before September 2, 1945 in the armed forces of any country allied with the United States). Include month, day and year for each entry. From 6-9-43 to 10-29-45

TYPE OF DUTY AND DATES OF EACH

BRANCH OF SERVICE	GENERAL DUTY FROM	GENERAL DUTY TO	ASTP OR V-12 FROM	ASTP OR V-12 TO	INTERNSHIP FROM	INTERNSHIP TO	RESIDENCY FROM	RESIDENCY TO	TRAINING FROM	TRAINING TO	EXTENDED ACTIVE DUTY* OR INACTIVE STATUS (Specify)	HIGHEST RANK HELD

*In separate sheet describe type of training *Extended duty means active duty of more than 90 days

44 Have you ever been arrested, charged or held by Federal, State or other law enforcement authorities for any violation of any Federal, state, county or municipal law, regulation or ordinance. Do not include anything that happened before your 16th birthday. Do not include traffic violations for which a fine of $25 or less was imposed. All other charges must be included even if they were dismissed. [ ] YES [X] NO

If answer is "Yes" give full details for each case, approximate date, charge, penalty, if any, and name(s) and address(es) of law enforcement agency(ies) involved.

45 SPECIFIC KIND OF ASSIGNMENT IN WHICH YOU ARE MOST INTERESTED internship

46 TYPE OF ASSIGNMENT FOR WHICH YOU CONSIDER YOURSELF BEST QUALIFIED research

47 TYPE OF GENERAL ASSIGNMENT PREFERRED (Indicate by inserting "1", "2", "3" or "4" in order of preference) [1] CLINICAL CARE OF PATIENTS [2] RESEARCH [4] ADMINISTRATIVE DUTIES [3] PUBLIC [illegible]

48 GENERAL TYPE OF DUTY PREFERRED (Indicate by inserting "1", "2" and "3" in order of preference) [1] CONTINENTAL DUTY [2] FOREIGN DUTY [3] SEA DUTY

49 GEOGRAPHICAL AREA IN WHICH YOU PREFER TO SERVE Northeast, New York

50 DATE YOU WILL BE AVAILABLE FOR ACTIVE DUTY Dec. 1st, 1959

51 OFFICIAL TRANSCRIPTS of grades made during all college, graduate, and professional training MUST BE SUBMITTED WITH APPLICATION as soon as possible. Be sure to request statement of standing in graduating class.

52 I CERTIFY that the foregoing facts are accurate and complete to the best of my knowledge and belief. I understand that they will be investigated and that any willfully false representation is sufficient cause for rejection of this application or for dismissal from the Service. I am willing to serve in any area or climate or wherever the exigencies of the Service may require.

DATE 29th of August, 1959 SIGNATURE [signature] (Sign your name in ink as it is written in full)

16 U.S. GOVERNMENT PRINTING OFFICE 1956—O-410000

fól. 80] Question no. 25

List of Publications Joseph H. Gyrt, M.D.,Ph.D.
c o Leyendecker, Box 37, Pelham, N.Y.

Monograph: Body Fluids (in Czech), Prague, 1957
Physiologie der Körperflussigkeiten, Gustav Fischer Verlag, Jena, 1958

Original Articles:

1. The Renal-Vascular Shunt, Fed.Proc.11,13,1947.
2. Renal of Post traumatic Anuria, Amer.J.Physiol. 164, 686,1951
3. The Neural Control of Renal Blood Flow, M.D.thesis, Yale,1951
4. The Renal Response to Extrarenal Depletion of the Blood Volume, J.Physiol.116, 307, 1952.
5. Effect of Nervous Stimulation on the Arterio-venous O_2 and CO_2 Differences across the Kidney. Nature, 171,784, 1953.
6. Renal Function in a Head-down Position. J.Physiol. 122,22P,1953.
7. The Development of the Regulation of the Volume and pH of the Extracellular Fluid. Ph.D. thesis, Cambridge, 1953.
8. The Inhibition of Water Diuresis by a Decrease in Blood and Extracellular Fluid Volume. J.Physiol. 124,41P,1954.
9. Cerebral Salt Wasting. Lancet, i, 752, 1954.
10. Central Nervous Control of the Volume of Extracellular Fluid. Physiol.Bohemoslov.4,14,1955.
11. On the Reinforcement of Mercurial Diuresis (in Czech).Cas.lek.ces.94,244,1955.
12. The Effect of Cardiac Oedema on Electrolyte and Water Metabolism. Acta Med.Hungarica 8,347,1955.
13. The Theoretical Basis for the Metabolic Preparation of Patients for Cardiac Surgery (in Czech). Rozhl. chirurg. 35, 124 & 184, 1956.
14. The Pathophysiology of Body Fluids in Anuria (in Czech). Cas.lek.ces. 95,836,1956.

List of Publications Continued

15. The Response of Human Infants to Acidosis, in the press.
16. The Importance of Potassium in Clinical Medicine (in Czech), Cas.lek.ces. 95,833,1956.
17. An Inexpensive Precision Stereotaxic Instrument, J. Physiol. 123, 15P, 1953.
18. The Effect of Denervation, Pituitrin and Varied Cation Concentration Gradients on the Transport of Cations and Water by Kidney Cortex Slices. J. Physiol. 133,287,1956.
19. Concerning the Transport of Alkali Cations by Kidney Cortex Slices. Biophys.Biochim.Acta 23, 321, 1957.
20. The Effect of Temperature on the Transport of Sodium and Potassium in Kidney Cortex Slices. J. Physiol.142,208,1958.
21. Nervous Control of Cations and Water in the Renal Tubules. Proc.Conf.Nervous Control Metabolism and Active Transport, Academy of Sciences, 1956.
22. Potassium in Congestive Heart Failure. Lancet, i. 1202, 1954.
23. The Neural Control of Shivering in the Pig.J.Physiol. 120,115,1953.
24. The Renal Response of Puppies to an Acidosis.J.Physiol. 124,358,1954. [fol. 81]
25. Uterine Electrolytes in Pregnancy and Labour. Lancet i, 718,1957.
26. The Mechanism of Mercurial Preparations on Transport Processes and the Role of Thiol Groups in the Cell Membrane of Renal Tubular Cells. Biochem.J. 67,15,1957.
27. The Effect of Acetylcholine Inhibitors on the Transport of Cations and Water in Kidney Cortex Slices. Collections Czechosl.Chem.Communic. 51,1530,1957.
28. The Transport of 42-K and 86-Rb in Kidney Cortex Slices. The Effect of Varied Concentration Gradients. Nature, 180, 1124.
29. The Effect of Pituitary and Adrenal Hormones on the Metabolism of Potassium. J.Clin.Invest. 30,673, 1951.

30. The Role of Sodium Salts and Adrenal Steroids in the Production of Hypokalemic Alkalosis. Yale J. Biol.& Med. 23:229,1950 and in "Essays in Metabolism", Little, Brown & Co., Boston, 1950.
31. The Effects of Pituitary and Adrenal Hormones on the Metabolism of Sodium and Water. J.Clin.Invest. 30:682,1951.
32. Operations on the Heart. Lancet, 153, 1955.
33. A New Stereotaxic Instrument for the Precise Localisation of Points in the Central Nervous System of Rats, Cats, Guinea Pigs and Small Dogs. Physiol. Bohemoslov. 6:530,1957.
34. The Effect of Calcium and Mercury on the Response of Kidney and Muscle Electrolyte Gradients to a Change in Extracellular pH. In the press.

(Fol. 82 *Refer to Application to Issue Hearing Card*

16. I was a member of the Communist Party in New Haven, Connecticut from Dec. 1946 to May 1951 while I was a student at Yale University School of Medicine (with the exception of August 1948 to July 1949 when I was in England). I never held any office in that organization and engaged in purely routine activities such as reading, discussions, meetings and paying dues. I have never advocated the overthrow of the United States Government by force or violence. I terminated my membership and activity in the Communist Party in May, 1951 when I left for Europe. I never joined the Communist Party of any other country and I never rejoined the Communist Party, U. S. A.

34-41. I was called up under the original wartime draft law in 1946, examined, and classified as 4 F. I reregistered under the 1948 law in 1949 and was classified 3 A. I was also registered at Draft Board No. 10, New Haven and on May 25, 1951 under the Doctors Draft Act. I departed from the United States subsequent to such registration for the purpose of carrying out the terms of a fellowship given by the National Foundation for Infantile Paralysis, Inc. for work to be performed by me at the University of

Cambridge, England. This was done only after having secured the advice of Dr. Samuel Harvey, the Yale University Advisor on the Draft.

44. On December 17, 1954, a grand jury in the United States District Court, District of Massachusetts, filed an indictment, Criminal no. 54-382-F, charging me with a violation of 50 App., U.S. Code, par. 462 and 12(a) of the Selective Service Act of 1948, as amended, for having failed to report for induction into the Armed Forces of the United States. This indictment is still pending. During the past four months my legal counsel and my wife have met with representatives of the Department of Justice, the Selective Service Administration, and the Department of State for the purpose of facilitating my return to the United States, my performance of all obligations under the Selective Service laws, and the dismissal of the said indictment.

51. The official transcripts of grades have already been requested and will be transmitted directly to you by the appropriate academic authorities.

s/ Joseph H. Cort

RECORD OF INDUCTION

Local Board No 25
Norfolk County
34 Marion St
Brookline, Mass.

CORT JOSEPH

% Hartington Grove, Cambridge, England

27 Dec. 1927

Research, Pediatric Physiology

Pre-Clin. Physiol. Medicine

M.D.

Boston, Mass.

SECTION II - LOCAL BOARD MEDICAL INTERVIEW

Residual poliomyelitis, residual tuberculosis, dangerous allergy, mental apathy

DD FORM 47

[fol. 84] PLAINTIFF'S EXHIBIT C

[STAT.] 221 Cort, Joseph H.
nac

THE FOREIGN SERVICE OF THE
UNITED STATES OF AMERICA

Address Official Communications to
American Embassy
1 Grosvenor Square, London, W.1.

November 28, 1951.

Mr. Joseph H. Cort,
54 Granchester Meadows,
Cambridge.

Sir:

In view of an instruction which has been received from the Department of State in Washington, you are requested to call at the Embassy at your first convenience. Please bring your passport when you call.

This office is open for business Monday through Friday between the hours of 9:00 a.m. and 5:30 p.m., holidays excepted.

Very truly yours,

s Walter M. Walsh
WALTER M. WALSH
American Vice Consul

[fol. 85] PLAINTIFF'S EXHIBIT D

[STAMP] 221 Cort, Joseph H.
mac

THE FOREIGN SERVICE OF THE
UNITED STATES OF AMERICA

Address Official Communications to
American Embassy
1 Grosvenor Square, London, W.1.

December 10, 1951.

Mr. Joseph H. Cort,
54 Granchester Meadows,
Cambridge.

Sir:

Thank you for your letter of December 6, 1951.

You were requested to call as the Embassy has received instructions from the Department of State that your passport should be held at the office and made valid only for return to the United States when you have completed arrangements for the journey. In these circumstances, it would be appreciated if you will call with your passport or forward it by mail at your first convenience.

Very truly yours,

/s/ Walter M. Walsh
WALTER M. WALSH
American Vice Consul

[fol. 86] PLAINTIFF'S EXHIBIT E

[SEAL] 221 Cort, Joseph H.
nac

THE FOREIGN SERVICE OF THE
UNITED STATES OF AMERICA

Address Official Communications to
American Embassy
1 Grosvenor Square, London, W.1.

December 27, 1951.

Mr. Joseph H. Cort,
54 Granchester Meadows,
Cambridge.

Sir:

In reply to your letter of December 14, 1951, I have to inform you that the Embassy was instructed by the Department of State in Washington to take the action communicated to you in my letter of December 10.

If you desire I shall be pleased to see you concerning this matter. You may, of course, execute any affidavit you may wish in regard to the Department's instruction on your case which will be forwarded to Washington. I must, however, request that you bring your passport when you call to be held at this office pending further instructions from Washington.

Very truly yours,

/s/ Walter M. Walsh
WALTER M. WALSH
American Vice Consul

[fol. 87] PLAINTIFF'S EXHIBIT F

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 54382 F

UNITED STATES OF AMERICA

v.

JOSEPH HENRY CORT

INDICTMENT

The grand jury charges:

JOSEPH HENRY CORT

formerly of Brookline, in the District of Massachusetts, on or about September 14, 1953, at Brookline, in said District, being a person charged with the duty of carrying out the provisions of Selective Service Act of 1948, as amended, (Title 50 App., U.S.C. Sections 451-470) and the rules and regulations made thereunder, did knowingly fail and neglect to perform such duty in that he unlawfully and knowingly failed and neglected to report for induction into the Armed Forces of the United States, as ordered by Local Board No. 25, Brookline, Norfolk County, Massachusetts; in violation of Title 50 App., United States Code, Section 462 and Section 12(a) of the Selective Service Act of 1948, as amended.

[fol. 88] A TRUE BILL

/s/ Everett L. Bunker
Foreman of the Grand Jury

/s/ Thomas P. O'Connor
Assistant United States Attorney

[fol. 89] DISTRICT OF MASSACHUSETTS, December 17, 1954
Returned into the District Court by the Grand Jurors and filed

/s/ David W. Walsh, Jr.
Deputy Clerk

[fol. 90] PLAINTIFF'S EXHIBIT G

RABINOWITZ & BOUDIN
Attorneys at Law
25 Broad Street
New York 4, N. Y.

July 27, 1959

Lieut. General Lewis B. Hershey
Director, Selective Service System
451 Indiana Avenue N.W.
Washington, D. C.

Dear General Hershey:

I write you with respect to my client, Dr. Joseph Cort, who was the subject of a discussion on July 23rd between Major Alexander Nuta, Assistant General Counsel of the Selective Service System, Mrs. Ruth Cort, the wife of Dr. Cort, and myself.

Dr. Cort is an American citizen by birth. He was indicted on December 17, 1954 by a Grand Jury of the United States District Court for the District of Massachusetts on the charge of having failed to report for induction into the Armed Forces of the United States on September 14, 1953 as ordered by Local Board No. 25, Brookline, Norfolk County Massachusetts, in violation of § 12 a of the Selective Service Act of 1948, as amended.

Dr. Cort had registered in New Haven, Connecticut under the Selective Service Act; he was declared 4-F on the basis of residual poliomyelitis. Thereafter, in May 1951, he registered under the Doctor's Draft Act prior to the effective registration date because he was to leave for Cambridge University, England where he had been given a fellowship in the field of physiology. He was advised by the New Haven Draft Board and by the Yale University Advisor for the draft that there was not as yet any machinery for giving doctors permission to leave but that he could take up his Cambridge position. He did so and subsequently became a lecturer in physiology at the University of Birmingham.

While in England he received notices to report for physical examination and then for induction at Brookline, Massachusetts. He did not respond to these notices for the following reasons: On November 28, 1951 shortly after his arrival in England the American Embassy demanded his passport; subsequently, it expired. Then Dr. Cort's name was mentioned in hearings conducted by the House Committee on Un-American Activities in connection with [fol. 91] its enquiries into Communism in Education. These facts and others either peculiar to Dr. Cort or occurring generally in the United States during this period, suggested that Dr. Cort's return to the United States might be followed by an appearance before Congressional Committees and other discriminatory treatment unrelated to the fulfillment of his obligations under the Selective Service laws. He consulted British counsel who advised him that the notices referred to could not be effectively served in Great Britain.

He thereupon remained in England until 1954 when the Home Office declined to permit him to remain in view of Dr. Cort's status under American law. He thereupon accepted an offer by the Institute for Cardiovascular diseases in Prague to continue research on those subjects and left with his family for Prague where he is still resident.

The occasion for my visit to your office was Dr. Cort's desire to return to the United States for permanent residence, and employment here, for the fulfillment of his obligations under the Selective Service laws and for the disposal of the criminal indictment against him.

The principal reason for this desire is that this is his country. His children, aged 2 and 4, are registered at the American Embassy in Prague as American citizens; his wife is an American citizen by birth.

There is another most important reason relating to Mrs. Cort's health. She has been suffering for several years from a serious illness diagnosed in Europe as Multiple Sclerosis. She has been treated medically in the United States for the last month. It is important, possibly

critical, that she continue to receive medical care in the United States. But she can not continue to remain separated from her husband and children.

It is our earnest hope that you would personally look into this matter and consider processing Dr. Cort for induction and a recommendation to the Department of Justice that in accordance with practice—although not an [fol. 92] invariable one—it dismiss the pending indictment. The humanitarian factor, rather than legal ones, seem to me most moving—a wife and mother compelled to choose between adequate medical care and return to husband and children. However, I should not wish to disregard the bona fides of Dr. Cort. While time has shown his conduct to have been unwise—and American counsel would undoubtedly have advised otherwise, he was moved by not insubstantial fears by reason of the situation prevailing in the United States in 1953 and 1954. Finally as a leading physiologist he can make a very real contribution to this country's welfare whether he is in the armed forces, the Public Health Service or in an American University. The enclosed Curriculum Vitae and list of publications attest to this fact.

I should very much appreciate if you could give Mrs. Cort and me the opportunity to discuss this matter with you personally.

Sincerely yours,

Leonard B. Borgin

SM

[fol. 93] PLAINTIFF'S EXHIBIT H

RABINOWITZ & BOUDIN
Attorneys at Law
25 Broad Street
New York 4, N. Y.

July 31, 1959

Major Alexander Nuta
Assistant General Counsel,
Selective Service Administration
Washington, D. C.

Dear Major Nuta:

I omitted to tell you in our brief telephone conversation of today that Mrs. Cort has pursued the alternate line which we discussed, *viz.*, the possibility of employment with the Public Health Service. She visited its offices in New York today and consulted at length with the medical officer in charge of recruitment. It appeared from that discussion that Dr. Cort could apply for an internship which could not take effect until July 1960; that the internship would be in effect for one year; and that it might then be followed by an application for a commission in the Public Health Service, such second employment being for a period of not less than two years.

Of course, we do not wish to take any steps except those which would constitute or lead to compliance with Dr. Cort's obligations under the Selective Service Act. For while such Public Health Service work was discussed by Mrs. Cort and by me in our discussion with you, it may be that compliance with the Selective Service Law requires at the very minimum availability for processing for induction into the Armed Forces. These are matters for your decision rather than for ours. I mention them to bring you up to date on the course of our own investigation, and to suggest again the possibility that this may justify a discussion with General Hershey himself before Mrs. Cort leaves for Czechoslovakia. However, in any event, *i.e.* whether or not such a meeting can be had

our conduct in this matter would of necessity have to be guided by your office.

[fol. 94] It occurs to me that we might simultaneously make application to the Public Health Service and make Dr. Cort available for processing for induction so that a determination could be made by the government as to the branch of government service in which he might make the greatest contribution. It is my own view, based upon knowledge of the facts now in my possession, and although service with the Public Health Service would be for a period of at least three years as against two years Army service, Dr. Cort could make a greater contribution in the former rather than the latter. In other words, the internship in the Public Health Service would involve full utilization of his medical training, whereas Army service might very well not.

Sincerely yours,

Leonard B. Boudin

LBB:bk

[fol. 95] PLAINTIFF'S EXHIBIT K

RABINOWITZ & BOUDIN
Attorneys at Law
25 Broad Street
New York 4, N. Y.

October 9, 1959

Colonel Daniel O. Omer, General
Counsel
Selective Service System
451 Indiana Avenue, N.W.
Washington, D. C.

Re: Dr. Joseph Cort

Dear Colonel Omer:

Supplementing my letter of September 30, 1959, may I advise you as follows:

(a) I have transmitted on behalf of Dr. Cort a fully executed application for appointment as a Commissioned Officer in the United States Public Health Service, as indicated by my enclosed letter of October 6, 1959 to Dr. Harald M. Graning. It would be appreciated if you would transmit this letter to Dr. Cort's Local Board for inclusion in his cover sheet.

(b) I am advised today that the Department of State has written you a letter requesting your advice, as indicated in paragraph fourth of my letter to you of September 30, 1959. I should very much appreciate it if you were able to advise the Department of State as early as possible of your views, and if you were able, to send me a copy of your letter to the Department.

(c) In addition to the application for employment in the United States Public Health Service, Dr. Cort on September 3, 1959 communicated with the Chief, Officer Procurement Program, Personnel Division, Office of the Surgeon, Headquarters First United States Army, inquiring whether he could submit an

After consulting with British legal counsel, I did remain outside the jurisdiction of the United States following the issuance by a Local Selective Service Board of certain orders to report for physical examination and induction. However, the purpose of my remaining outside the United States was not for the purpose of avoiding training and service in the Armed Forces of the United States in time of war or a period declared by the President to be a period of national emergency within the meaning of 8 U.S.C. Section 1481 (a) (10).

At the present time and for the last three months my legal counsel and my wife have met with representatives of the Department of Justice, the Selective Service Administration and the Department of State for the purpose of facilitating my return to the United States and my performance of all obligations under the Selective Service Laws. I desire to return to the United States for those express purposes. Completion of these arrangements requires my physical presence in the United States for which a passport is necessarily a condition. This return should be as soon as possible, since I have to be in the United States to complete formalities of applying for a service internship before December 1, 1959, and require a passport number in order to negotiate for an exit permit from Czechoslovakia.

application for a United States Army internship. I have not as yet been advised of the Army's response to this letter; presumably, if it is in the affirmative, Dr. Cort would also apply for such an internship. [fol. 96] I shall, of course, keep your office, and through it the local Selective Service Board, acquainted with the developments here.

However, I am concerned about one remaining aspect as to which I am not quite clear, *i.e.*, the third alternative of applying to his Local Board for induction. I have the impression, although I have no supporting memorandum in my files, that this should not be done at the present stage of the proceedings. However, because I am not sure that my memory is correct, may I inquire whether at the present stage, namely, the pendency of the indictment, it would be proper or practicable for Dr. Cort to apply to his local Board for consideration for induction? If this can or should be done, could you tell me the mechanics, namely, should he physically appear at the Board and present himself to the Clerk or should he write to the Board itself for an appointment, or should I write to the Board in this connection?

It may be that in view of the applications for internships referred to above and the pendency of the indictment, action upon the third alternative suggested here should be withheld for the moment. I am, however, writing you in order to be sure that we have not overlooked something which may turn out to be important.

Sincerely yours,

LEONARD B. BOUDIN

LBB:se

[fol. 97] PLAINTIFF'S EXHIBIT L

[SEAL] NATIONAL HEADQUARTERS
Office of the Director
SELECTIVE SERVICE SYSTEM
451 Indiana Avenue Northwest
Washington 25, D. C.

Address Reply to
The Director of Selective Service

Mr. Leonard B. Boudin
Attorney at Law
25 Broad Street
New York 4, New York

Oct 16 1959

Subject: Joseph H. Cort
SS No. 19-25-27-408

Dear Mr. Boudin:

This is in reply to your letter of October 9, 1959, inquiring whether it would be proper or practicable for Dr. Cort to apply at this time at his local board for consideration for induction.

Dr. Cort is, of course, at liberty to submit any written information or statements he may desire to his local board including a request that he be considered for induction. However, since he has been a delinquent since 1953 and has been indicted for this delinquency, further Selective Service processing would not be appropriate inasmuch as the entire matter is now in the hands of the United States Attorney.

You further requested in your letter that, if possible, you be sent a copy of our reply to an inquiry from the Department of State. A reply to the Department of State has been prepared, but any release of the content of this letter must be by that Department.

For The Director,

/s/ Daniel O. Omer
DANIEL O. OMER
Colonel, JAGC
General Counsel

[fol. 98] PLAINTIFF'S EXHIBIT M

COPY

Prague, Czechoslovakia

October 27th, 1959

General L. B. Hershey
Selective Service Administration
Washington, D. C.

Dear General Hershey,

I wonder if you recall a visit last summer from myself and my legal counsel, Mr. Leonard B. Boudin. In company with Colonel Omer, we had a long and detailed discussion dealing the situation of my husband, Dr. Joseph H. Cort. You were at that time reluctant to make any commitment concerning your future attitude towards my husband's efforts to return to the United States, with a view to fulfilling his service requirements and thereby removing the grounds for an indictment for draft evasion.

I believe that I did not misinterpret your attitude that efforts to serve in any capacity, preferably professional, would be evidence of good faith on his part.

Colonel Omer, on the other hand, subsequently expressed to us his candid opposition to any leniency, legal or otherwise, on the grounds that we had deliberately impugned the good name of our country. He said, however, that in your absence he would be guided by your wishes in the matter.

In the interim, after obtaining as much information as possible concerning professional requirements, my husband has applied for internship in the Public Health Service, and has corresponded with Major de Graaf, Office of the Surgeon General, U.S. Army, Governors Island, N. Y., in an effort to apply for an army internship, for which he [fol. 99] is overage. You may recall that, not having completed an internship, my husband is not qualified for medical service in any government branch. Since the deadline for government internship applications is December 1st, we had planned to return home by the beginning

[fol. 107] PLAINTIFF'S EXHIBIT BB

of November. Other internship applications can be made up to January 1st.

Having made all preparations to leave, informed our parents, etc., we now find that the Passport Office of the State Department refuses to issue a passport to my husband on the grounds that, under the McCarran Act, he has expatriated himself by willful draft evasion. In this decision they were apparently influenced by the strong personal recommendation of Colonel Omer.

You may perhaps appreciate the difficulty of our position and our chagrin. Having expended considerable effort in making good faith attempts to serve internships, and in preparing to transport a household including two small children, we now find the path home blocked, and partially through the offices of Colonel Omer.

I can only speculate on the motivation of such a vindictive attitude. It is quite true that there was considerable publicity in England in the spring of 1961, and that wide sections of political opinion kept upon the "Croft case" with cries of joy. This was surely a product of the political atmosphere prevailing in England at the time, which was not of our making. Was it mentioned [fol. 100] during our conversation that three months of utterly private intercession by the Vice-Chancellor of Birmingham University, as well as very prominent scientists and members of parliament, proved fruitless to the eruption of our "case" into the newspapers?

On the other hand, are we to pretend that the phenomena commonly known as "McCarthyism" never existed, and that punitive measures against communists, former communists, and "punks" of all description were never taken inside the Army as well as out?

I hope you will take the time to consider our situation dispassionately, for the future of not one, but four, Americans is involved.

Yours sincerely,

/s/ Ruth Cort
Ruth M. Cort, M.D.

[fol. 101] PLAINTIFF'S EXHIBIT Z

Form Approved
Budget Bureau No. 47-R115

REGISTRATION APPROVED

DEPARTMENT OF STATE
FOREIGN SERVICE OF THE
UNITED STATES OF AMERICA
Application for Passport
~~Application for Registration~~
(FORM FOR NATIVE CITIZEN)

PASSPORT ISSUED

Joseph Henry Court (name in full) a NATIVE citizen of the United States, solemnly swear that I was born at Boston (city or town) Massachusetts (State or country) on or about December 27, 1927 (date); that I am now residing at 3 Na Sypcine, Prague 15, Czechoslovakia (give present address in full); that I resided in the United States from 1927 to 1951 at Boston and Brookline and Cambridge, Mass., New Haven, Connecticut (except stay in Czechoslovakia 1948 - 1949); and that I have resided outside the United States as follows:

(State names of and period of residence in each foreign country; each shall be any foreign country, regardless of duration, unless so stated)

Cambridge, Mass. and Cambridge and Birmingham, England	from	September 1948	to	June 1949
	"	June 2, 1951	"	July 30, 1954
Prague, Czechoslovakia	from	August 8, 1954	to	present date

My legal residence is at 161 York Street, New Haven, Connecticut

and I intend to return to the United States to reside permanently within six months

I was ~~discharged~~ married on August 20, 1949 at Mamaroneck, N. Y. to Ruth Mathilde Leyendecker

who was born at New York, New York on July 30, 1925 is (a ~~citizen~~ national) an American citizen

and is now residing at Prague, Czechoslovakia (with me)

My father, Boris Jurt (name in full) was born at Zhitomir Russia (city or town) (State or country)

on about 1894 and is now residing at 576 Washington Street, Brookline 46, Mass.

My mother, Eva Kolidicka Collins (maiden name) was born at Brest Litovsk Russia (city or town) (State or country)

on about 1896 and is now residing at 576 Washington Street, Brookline 46, Mass.

(IF EITHER PARENT WAS BORN OUTSIDE THE UNITED STATES, FILL IN THIS PORTION)

My father immigrated to the United States on or about 1916 resided continuously

in the United States from 1916 to 1959 at Boston and Brookline, Mass. and was naturalized as a

citizen of the United States before the unknown (name of court) Court of

at (city or town) on (Month) (Day) (Year)?

My mother immigrated to the United States on or about 1916 resided continuously

in the United States from 1916 to 1959 at Boston and Brookline, Mass. and was naturalized as a

citizen of the United States before the unknown (name of court) Court of

at (city or town) on (Month) (Day) (Year)?

I request the inclusion of my wife

(name in full)

She accompanies me on this application

I request the inclusion of my minor children as follows:

(name in full) at (city or town and State or country) on (date)

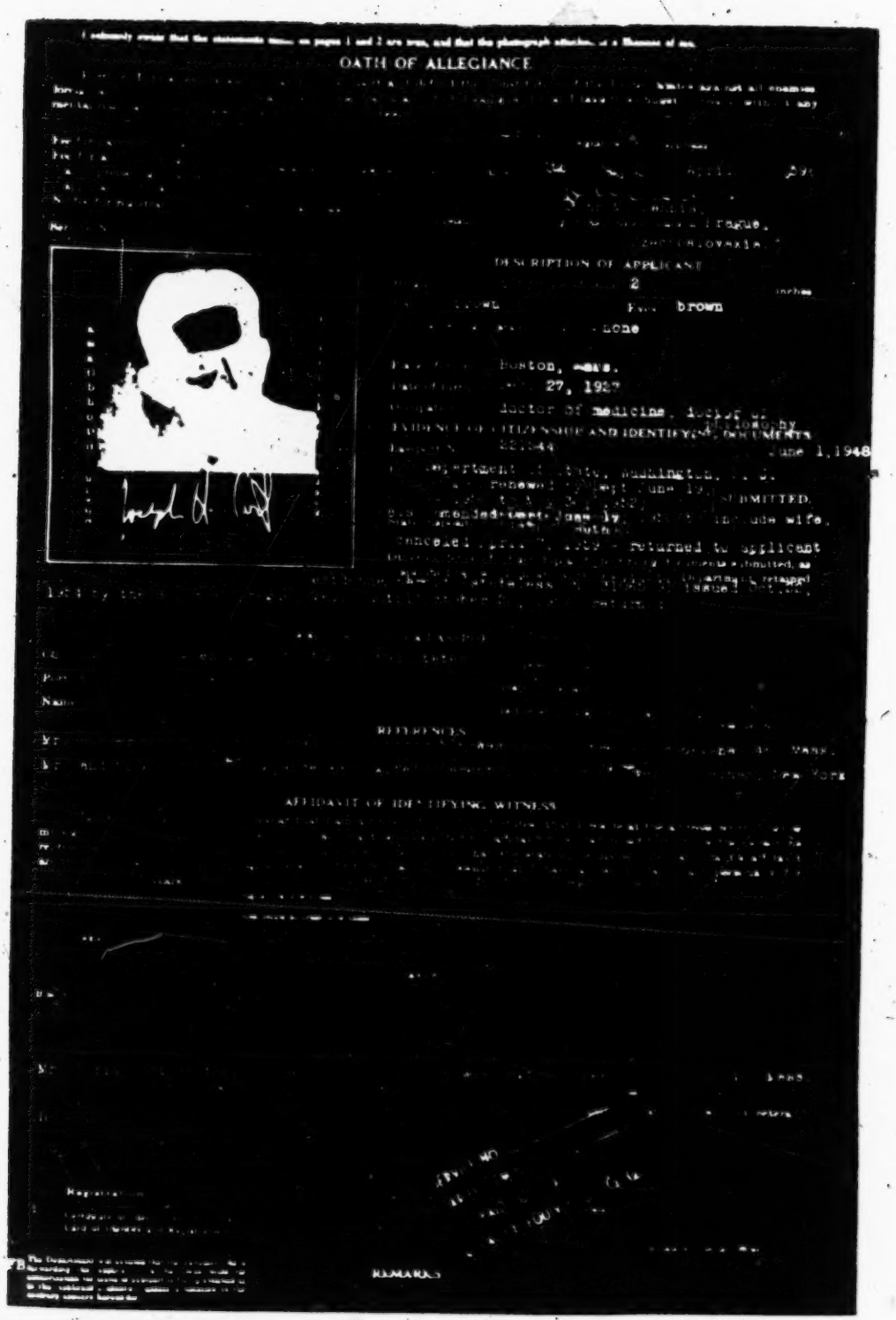
(name in full) at (city or town) on (date)

(name in full) at (city or town) on (date)

I HEREBY

Applying for registration

[fol. 102]



OATH OF ALLEGIANCE

DESCRIPTION OF APPLICANT

2

brown

None

Boston, Mass.

27, 1927

Doctor of Medicine

June 1,1948

returned to applicant

REFERENCES

AFFIDAVIT OF IDENTIFYING WITNESS

REMARKS

[fol. 103]

Form FS-419
(Effective April 1, 1951)

DEPARTMENT OF STATE
FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

Form approved
Budget Bureau No. 44-R

AFFIDAVIT BY NATIVE OR NATURALIZED AMERICAN TO EXPLAIN PROTRACTED FOREIGN RESIDENCE

This form should be used by any native or naturalized American citizen who has resided abroad for two years or more. However, in cases where form 21 is used, this form need not be used.

The form must be used by a naturalized citizen who has resided for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated. It must also be used by a naturalized citizen who has resided continuously for five years in any other foreign state or states. In cases of naturalized citizens the exact periods and places of foreign residence since naturalization should be stated.

This form must always accompany applications for extension of passports which have been expressly limited as to validity.

As many copies of this form should be made out as of the application for registration or passport which it accompanies and should be firmly attached thereto.

I, Joseph Henry CORT, a native American citizen, born at Boston, Massachusetts (County), do solemnly swear that I departed from the United States on or about May 29, 1951, that I have since resided at Cambridge and Birmingham (England) and Prague (Czechoslovakia) (Countries), and that I arrived at Prague, Czechoslovakia (City and country), where I am now permanently residing, on August 8, 1951.

My reasons for such foreign residence being as follows: See attached Affidavit and Supplementary Statement.

I have previously taken an oath of allegiance to the United States before a United States diplomatic or consular officer at .....

Since establishing a residence abroad I have made the following visits to the United States:

From ..... 19 .. to ..... 19 .. From ..... 19 .. to ..... 19 ..

From ..... 19 .. to ..... 19 .. From ..... 19 .. to ..... 19 ..

I have not been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in, the armed forces of a foreign state; accepted or performed the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof; voted in a political election in a foreign state or participated in an election or plebiscite to determine sovereignty over foreign territory; made a formal renunciation of nationality either in the United States or before a diplomatic or consular officer of the United States in a foreign state; been convicted by court martial of desertion from the military, air, or naval service of the United States in time of war, or of committing any act of treason against, or of attempting by force to overthrow, or of bearing arms against the United States, or deserted from or remained outside the jurisdiction of the United States for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States.

If any of the above-mentioned acts or conditions are applicable to the applicant's case, or to the case of any other person included in this application, a supplementary statement under oath should be attached and made a part hereof.

I maintain the following ties of family, business, and property with the United States:

Mr. and Mrs. Boris Cort, parents, 576 Washington Street, Brookline, 46, Mass.
Mrs. and Mrs. Robert K. Leyendecker, parents-in-law, 1073 Grant Ave., Pelham, N. Y.

I have served in the armed forces of the United States during the following periods:

I (do / do not) pay the American Income Tax at .....

I intend to return to the United States permanently to reside within six (months / years) or when .....

I have (read / had read to me) in the English (Italian, Greek, Spanish, etc.) language the contents of this form and I swear that I understand the statements contained herein.

(Signature of applicant)

3 Na Sypcime, Prague 15, Czechoslovakia
(Address)

AMERICAN FOREIGN SERVICE AT Prague, Czechoslovakia.

Sworn to before me this 24th day of August 1951.

(Seal)

John M. Dennis,
Consul
of the United States of America

(SEE INSTRUCTIONS PRINTED ON REVERSE SIDE)

[illegible] will indicate whether the above is an affiant's independent statement. If not, officer should state whether or not affiant's statement has been translated from a foreign language. This statement should be in ink and initialed by persons.

[Fol. 104] OPINION OF OFFICER TAKING AFFIDAVIT

The officer before whom the affidavit is made should see that the pertinent facts and circumstances regarding the applicant's residence abroad are fully and correctly set forth in the affidavit and application. If, for any reason, they are not so stated, the officer should complete them in the space below, adding such comment or opinion as is appropriate. He should state whether the facts recited constitute the true reason for such residence. He should also state his opinion, in each case, whether the applicant has abandoned his allegiance and ties with the United States and so shaped his plans as to render it improbable that he will return to the United States to reside and perform the duties of a citizen and whether he has lost his American citizenship under any of the provisions of the Nationality Act of 1940 or the Immigration and Nationality Act, effective December 24, 1952. He should date the opinion, sign his name, and add his title below the statement of his opinion.

The officer who signs this side of the form need not necessarily be the officer who signs the front side, provided that he has interviewed the applicant or is otherwise in full possession of the facts in the case.

Reference is made to the Department's Confidential Operations Memorandum of February 25, 1959.

Dr. Court said his wife, Dr. Ruth Mathilde Court, to whom the Embassy issued passport No. 45298 on May 5, 1959, recently spoke with officials in the legal section of the Passport Office who are familiar with this case. Without evidence to the contrary, the consular officer has no reason to doubt Dr. Court's statements made in the attached affidavit which purports to answer the charge that he departed from and remained outside the jurisdiction of the United States for the purpose of evading or avoiding training and service in the armed forces of the United States.

John Dennis
John M. Dennis,
Consul of the United States
of America

Prague, Czechoslovakia,
August 24, 1959.

[fol. 405] AFFIDAVIT

REPUBLIC OF CZECHOSLOVAKIA)
CITY OF PRAGUE) ss:
EMBASSY OF THE UNITED STATES)
OF AMERICA, CONSULAR SECTION)

Before me, John M. Dennis, Consul of the United States of America at Prague, Czechoslovakia, duly commissioned and qualified, personally appeared the undersigned who, being duly sworn, deposes and says as follows:

"My name is Joseph Henry Cort
and I reside at 3 Na Sypeine, Prague 15,
Czechoslovakia

I last left the United States in June 1951, and have since resided at 54 Grant Chester Meadows, Cambridge, England and 10 West Hill Road, King's Norton, Birmingham, England, from June 1951 until July 1954, and at Prague, Czechoslovakia, since August 1954 till the present date.

Before leaving the United States, I registered on May 25, 1951 with the Local Board at New Haven, Connecticut, under the Selective Service Act of 1948. I notified that Board on the same day that I was about to proceed to England for the purpose of reasearch fellowship in England.

I received letters from Brookline, Mass., ordering me to report for physical examination in February 1953, then on July 1, 1953, and again in July 1953, and for induction on September 14, 1953. I was not aware of the fact that I was reported delinquent for failure to report as ordered; I also was not aware of the provisions of Section 349(a) (10) of the Immigration and Nationality Act of 1952.

I submit the following *attached* supplementary explanatory statement:

And further deponent saith not.

/s/ J. H. Cort
(signature of affiant)

Subscribed and sworn to before me this 24th day of August 1959.

/s/ John Dennis
(SEAL) JOHN M. DENNIS,
Consul of the United States
of America

[fol. 106] SUPPLEMENTARY
EXPLANATORY STATEMENT

Because it may be asserted that the matters above stricken are applicable, although I do not concur, I have followed the Department's instructions, stricken the said matter and added this supplementary statement.

I have been employed from 1954 to date by the Institute for Cardiovascular Research, an organization under the jurisdiction of the Ministry of Health in Prague, Czechoslovakia. I have not, however, acquired Czechoslovak nationality or citizenship, nor was an oath, affirmation or declaration of allegiance required of me or made by me in connection with such employment. Therefore, 8 U.S.C. Section 1481 (4) is inapplicable.

I departed from the United States in May 1951, for the purpose of carrying out the terms of a fellowship given by the National Foundation for Infantile Paralysis, Inc., an American corporation, for work to be performed by me at the University of Cambridge, England. I departed from the United States after having secured the advise of the Yale University advisor on the draft, Dr. Samuel Harvey, that this departure was lawful, and after having registered prior to the effective date under the Doctors' Draft Act in New Haven, Conn. I remained in England from 1951 to 1954, for the purpose of carrying out the terms of that fellowship, which was renewed for an additional year, and subsequently for the purpose of accepting the position of and carrying out my duties as a lecturer in physiology at the University of Birmingham, England. In 1954, I traveled to Czechoslovakia for the purpose of securing the employment first above named.

[fol. 108] PLAINTIFF'S EXHIBIT CC

Correspondence

Prague, Czechoslovakia, October 23, 1959

AFFIDAVIT

I, Dr. Joseph Henry Cort, make the following statement in connection with my application for a passport to return to the United States of America:

1. I left the United States on May 29th, 1951 for the sole purpose of fulfilling the terms of a research fellowship granted to me by the National Foundation for Infantile Paralysis, Inc. for research work in the Department of Experimental Medicine, Cambridge, England, such a post being of great advantage for my scientific career. There was no desire whatsoever to make myself unavailable for military service, as evidenced by the fact that I registered on May 25th, 1951 for the Doctors Draft, almost two weeks before the due date of registration, and was informed at that time that I could leave the country to undertake the abovementioned post.

2. In 1952 I remained in England after the expiration of my passport because I felt that the fact that the State Department had demanded the return of my passport would affect possibilities of scientific employment at that time in the United States.

3. In 1953 I received several notices to report for examination, and then induction, in the draft. I did not so report for the following reasons:

a) since I had been a member of the American Communist Party while a medical student at Yale University, and had been mentioned as such several times in the hearings of the House Un-American Activities Committee, it appeared that U.S.Army policy at that period would prevent my serving as a doctor in the army since I doubted that I could be granted a commission.

b) since I had been classified 4-F by Selective Service in 1946, I felt that it would not even be possible to serve in a non-professional capacity.

c) since I fully expected that actual army service would not be possible, and since I was not in possession of a valid passport at that time, to have responded to the notices to report for either examination or induction would have meant returning to the United States and leaving very satisfactory employment as a lecturer in Physiology at a time when return to this employment would not have been possible, and when I was afraid of the possibility of further Un-American Activities Committee hearings and possible prosecution under the Smith Act.

d) I was not aware of the possible consequences of this under American law.

4. In 1954 I came to Czechoslovakia because I felt that the wide publicity which upon renewal of my permission to stay in England had received in that country would most seriously affect my employability and the dangers mentioned in 3 c above in the United States at that time. From 1955 to 1959 my return to the U.S. was not conceivable to me due to the serious illness of my wife, so that I could not transport two very small children and an ill wife from hospital in Prague to the U.S.

[fol. 109] 5. I wish to stress that at no time from 1951 to the present has there been any desire on my part to evade my obligations to perform military service for the United States, nor has any action of mine been so motivated. My failure to respond in 1953 was due only to a conviction that actual military service for me in any capacity at that time was not actually possible, and that my return to the United States at that time would only involve me in congressional committee hearings, possible Smith Act prosecution, and unemployment as a scientist. I am willing at present, as I have been in the past period, to carry out my military service obligations, and wish to return to the United States at the present time for this purpose.

s/ Joseph H. Cort
Joseph Henry Cort, M.D. Yale, Ph.D. Cambridge

[fol. 110] PLAINTIFF'S EXHIBIT EE

Prague, Czechoslovakia, November 2nd, 1959

STATEMENT

My application for a passport is now in the stage of departmental appeal after the decision of the passport section of the Department of State that, having expatriated myself, a passport can no longer be granted. In connection with these appeal hearings I feel that I should offer a further statement, and in so doing, explain why such a statement has not been made previously. I have realised from the outset of the present negotiations that the lack of a frank and open statement from myself to the Department of State might be construed as indicating an arrogant and recalcitrant attitude. If so, this is not true. Despite my own inclination and the advice of the United States Consul in Prague at that time, I did not previously make such a statement because my affairs in the United States were in the hands of legal counsel and I felt that no statement should be made without consultation—which consultation is very difficult by mail in the present case. Furthermore, on the basis of legal consultations and discussions held by my wife while she was in the United States this past summer, I was under the impression that if strenuous bona fide attempts were made to fulfill service requirements, my return to the United States to implement this compliance would not constitute a serious problem. I believed that with clear evidence of sincerity of purpose, my citizenship would not be called into question.

My wife was in the United States for a period of ten weeks this past summer. The purposes of this visit were her urgent need for expert medical consultation, her desire to see her aged father, and as far as possible to expedite arrangements for our permanent return home. In conversations at the Department of Justice in Washington, it was indicated to her that in cases of alleged draft evasion the Justice Department was primarily interested in securing compliance with selective service laws.

She then visited the Selective Service Administration to determine what would, in their opinion, constitute compliance in my case. This was necessary because of several complicating factors, i.e. that I am over age for regular military service, and since I have not completed an internship in the United States I am ineligible for immediate induction for service as a physician.

In a long conversation with General Hershey, in the presence of Colonel D. Omer and Mr. L. Boudin, the General indicated that attempts to acquire eligibility for service as a physician (in the armed forces or the Public Health Service) would be clear evidence of desire to comply with Selective Service requirements. General Hershey suggested that in the first instance application for internship in the military and Public Health Services be made. [fol. 111] Failing these, private internship applications should be the next step, in preparation for actual service in the next year. He considered attempts to serve professionally entirely appropriate and acceptable. Application for service in a non-eliminent security capacity was not discussed. General Hershey would not, of course, commit himself to any recommendation to the Department of Justice until my physical presence in the United States gave concrete evidence of my sincerity of purpose.

Accordingly, upon my wife's return to Prague with this information, I have attempted to follow General Hershey's advice with the following steps: 1. application for a passport to return home, 2. application for cancellation of permission to stay in Czechoslovakia and permission to leave for the United States, 3. application completed as far as possible outside of the United States for an internship in the United States Public Health Service, 4. correspondence with the Surgeon General's Office in New York City about application for an Army internship, which step can only be made in the United States since army regulations prohibit the sending of the appropriate forms outside of the United States, 5. the rapid winding up of all personal and financial matters in Czechoslovakia.

Following the above mentioned interview, Colonel Omer stated explicitly to my wife and Mr. Boudin that, although he disagreed with General Hershey's views, he

would feel bound to respect them in the Generals' absence. I am now led to believe that, when Colonel Omer was asked for his opinion by the passport section of the Department of State, he expressed his own views rather than those of General Hershey.

My legal counsel has by this time submitted a statement from me primarily pertaining to the legal bases of passport refusal, but I feel that some further elaboration is pertinent to my appeal, and in particular should include comments on the period 1953-1954.

In this period I was not aware of the possible consequences of non-compliance with Selective Service directives, although I realize that ignorance is not a mitigating circumstance in the eyes of the law. I was aware only of the disastrous consequences to my professional life of abandoning an excellent teaching position, and therefore sought to safeguard this position through private professional intercession to the Home Office over a period of three months, including the intervention of a member of parliament. The consequent widespread attention in the British press to this matter was not on my instigation, nor was it my purpose to utilize notoriety to slander my country. When asked for comment on discriminatory measures taken against left wing physicians in the United States at that time, I frankly said that I believed that [fol. 112] they were wrong. I would do so again.

My wife and I took political asylum in Czechoslovakia because we feared severe penalties under the law and by further press publicity if we returned to the United States at that time—immediately after widespread publicity in England. Such would be both ruinous professionally and cause great suffering to our families. We have come to feel that this decision was a serious mistake on our part.

I am aware that the opinion may be held that just retribution should be exacted for apparent refusal to serve, and causing embarrassment to, one's country. I can only comment that over five years of exile is a punishment the severity of which cannot be judged by persons who have not experienced it.

I therefore appeal for the opportunity to return to [illegible] as a native-born American citizen, in order to fulfill my citizen's obligations. We wish to rear our children as Americans in America. I appeal also on the basis of my wife's [illegible] chronic illness. From the experience of her visit last summer to the United States, we have every reason to believe that return home would afford her at least partial recovery.

I am quite aware that we have possible recourse to the courts for clarification of the legal issues involved. We are very reluctant to resort to this because we have no desire to engender further soul-searching, we do not have the necessary financial resources, and we do not wish to visit [illegible] misery upon our families.

Joseph Henry Gort, M.D. Yale, Ph.D. Cambridge

Subscribed and sworn to before me this [illegible] day of November 1958.

SEAL

[illegible] Secretary's [illegible] to the foregoing paper omitted in printing.

[fol. 114] DEFENDANT'S EXHIBIT A

In Reply Refer to: 130—Cort, Joseph Henry

BOARD OF REVIEW
PASSPORT OFFICE

60 2984
February 10, 1960

Dear Mr. Boudin:

Reference is made to my letter of January 18, 1960, concerning the citizenship case of Dr. Joseph H. Cort.

The Board of Review on the Loss of Nationality has given very careful consideration to the appeal of Dr. Cort, but, upon the basis of the record and in the absence of a decision of the Supreme Court regarding the point of law involved, it has affirmed the previous administrative decision that Dr. Cort expatriated himself under the provisions of Section 349(a)(10) of the Immigration and Nationality Act.

As you were informed orally when you first discussed Dr. Cort's case with members of the Board, the Board, in recent months, has generally followed the policy of withholding action in cases involving the application of Section 349(a)(10) as well as Section 401(j) of the Nationality Act of 1940, pending the decision of the Supreme Court in the case of *Mendoza-Martinez v. Macken*. However, in view of your representations concerning the urgency of obtaining a decision in Dr. Cort's case, the Board has acted on his appeal, considering it in advance of its regular turn on the Boards' docket.

The decision in Dr. Corts' case, set forth above, is subject to reconsideration after the Supreme Court renders its decision in the case of *Mendoza-Martinez v. Macken*.

Inasmuch as Dr. Cort has exhausted his other administrative remedies, the Embassy at Prague and the Department are prepared to give prompt consideration to Dr. Cort's request for a certificate of identity upon his execution of a formal application therefor in accordance

with the procedure set forth in 22 CFR 50.24. No record [fol. 115] has been found in the Passport Office of the receipt of such an application.

The Embassy at Pfaffenhofen being advised of the Board's decision and is being instructed to give prompt consideration to any application which Dr. Gort may make for a certificate of identity.

Sincerely,

/s/ Robert D. Johnson
Acting Chairman, Board of Review
on the Loss of Nationality

A true copy of the signed original /s/ HLP

PPT:AJNicholas JECotter:HLP 2/10/60

Mr. Leonard B. Boudin,
Attorney at Law,
25 Broad Street,
New York 4, New York.

[fol. 116] Secretary's Certificate to foregoing paper omitted in printing.

[fol. 117] ——DEFENDANT'S EXHIBIT B

DEPARTMENT OF STATE
THE LEGAL ADVISER

February 8, 1960
60 2979

MEMORANDUM

To: PPT—Mr. Robert D. Johnson

From: L—Eric H. Hager

Subject: Citizenship Case of Dr. Joseph Henry Cort.

Reference is made to your memorandum dated January 19, 1960, concerning the above case, together with the attached copies of correspondence from the files of the Harvard Medical School. We have reviewed that correspondence and believe that with the addition thereof the record now establishes a *prima facie* case that Dr. Cort remained outside the United States for the purpose of avoiding military service.

Unless and until the Supreme Court holds Section 349 (a) (10), of the Immigration and Nationality Act of 1952 unconstitutional, a question which is currently before the Court in *Mendoza-Martinez* v. *Mackey*, I believe the Department should avoid taking action inconsistent with the Solicitor General's argument that the statute is constitutional. Under the circumstances, I believe the Department has no alternative but to hold that Dr. Cort has lost his nationality under the foregoing provision of the statute. However, I suggest that the Department's decision, as communicated to Dr. Cort or his attorney, be so worded that its continued validity will be contingent upon a holding by the Supreme Court in the *Mendoza Martinez* case that the statute is constitutional.

Attachment:

Passport file.

L SFP:WLGriffin:dft

[fol. 118] Secretary's Certificate to foregoing paper omitted in printing.

[fol. 119] DEPARTMENT EXHIBIT C

BOARD OF REVIEW ON THE LOSS OF NATIONALITY PASSPORT OFFICE

December 8, 1959
60 2080

Case of: Joseph Henry Cort

Appeal

The Department, on October 16, 1959, held that Joseph Henry Cort had expatriated himself on September 11, 1953 under the provisions of Section 349(a)(10) of the Immigration and Nationality Act by remaining outside of the jurisdiction of the United States during a period of national emergency for the purpose of evading or avoiding training in the armed forces of the United States. The Board, at the request of Dr. Cort's attorney, considered the matter without awaiting the formal approval of a certificate of the loss of nationality. A hearing was held on October 28, 1959.

Facts of Case

Joseph Henry Cort was born at Boston, Massachusetts on December 27, 1927 and resided continuously in the United States until the summer of 1948, when he went abroad as a student. He returned to the United States in June 1949 and stayed here until June 1951, when he went to England. He resided in England from June 2, 1951 to July 30, 1954 and has been in Switzerland since August 8, 1954. The following facts have been stipulated by Dr. Cort's attorney:

1. Dr. Cort was registered under the Selective Service Act with Local No. 41 at Brookline, Massachusetts on December 27, 1945.

2. He was given a physical examination on February 4, 1946 and found disqualified for general military service.

3. He was classified 4-F on March 5, 1946.

4. He was registered on July 5, 1949 under the Universal Training and Service Act of 1948 with Local Board No. 25 at Brookline, Massachusetts.

5. He was classified 3-A on September 20, 1949.

6. He was registered on May 25, 1951 under the provisions of the Doctors' Draft Law.

7. On September 11, 1952, he was classified 1-A (medical).

8. He was classified 1-A on February 9, 1953.

[fol. 120] 9. On February 9, 1953, a letter was sent to Dr. Cort by his local board directing him to report to Frankfurt, Germany within 30 days of the receipt of the notice for a physical examination as a Special Registrant.

10. On June 4, 1953, the local board sent a letter to Dr. Cort directing him to report for a physical examination to the board in Brookline, Massachusetts on July 1, 1953.

11. On July 3, 1953, the local board sent a letter to Dr. Cort ordering him to report to Frankfurt, Germany for a physical examination as a regular registrant within 30 days of the receipt of the notice and directing him to notify the local board as to his intended course of actions; otherwise, he would be immediately processed for induction.

12. On August 13, 1953, the local board sent a letter to Dr. Cort ordering him to report to the board on September 14, 1953 for induction.

13. Dr. Cort received the above-mentioned orders sent to him in 1953 but failed to report as directed.

In addition, the Selective Service files indicate that, on December 29, 1952, Dr. Cort, who was then in England, addressed a letter to the Massachusetts Medical Advisory Committee, in which he requested further deferment from Selective Service on the ground that his future civilian function would be more essential to the country than military service. He stated that, in July 1953, he would begin as an instructor in physiology at the Harvard Medical School. The Medical Advisory Committee sent the letter to Dr. Cort's local board on February 3, 1953 with the recommendation that Dr. Cort, as a special registrant, be considered available for active military service.

The local board informed Dr. Cort, in a letter dated February 9, 1953, that the Medical Advisory Committee recommended that he be considered "available for active military service" and that this recommendation was based on his appointment to the Department of Physiology, Harvard Medical School, effective July 1953. The local board sent, with the letter, Form 223, ordering Dr. Cort to report for a physical examination either to it or to the commanding officer of the Examining Facility at Frankfurt, Germany. To this letter and notice and to subsequent ones, Dr. Cort made no response.

At the hearing, Dr. Cort's attorney argued that Dr. Cort had not remained abroad to avoid serving in the United States military forces but had remained outside of the United States to avoid being called before a Congressional committee investigating Communist activities. The attorney also argued that, because of Dr. Cort's physical condition, he would not have been accepted for general military service if he had reported and would not have been commissioned because of his "political" [fol. 121] affiliations. The attorney conceded that Dr. Cort's physical condition would not have disqualified him from serving as a doctor. The attorney also argued that Dr. Cort decided to remain in England because he was happy to be a member of the academic community in England. The attorney also brought out that Dr. Cort had consulted an English attorney who advised him that the order of the draft board could not be legally served, or at least enforced, in England.

Discussion

There is no dispute as to the facts in the case other than the reason for Dr. Cort's failure to comply with the orders from his local board. After a careful review of the Department's files and the files of the draft board, it appears that, as late as December 29, 1952, Dr. Cort definitely intended to return to the United States before July 1953 in order to take a position in the Harvard Medical School. Approximately six weeks later, Dr. Cort was sent a notice to report for a physical examination.

There is no evidence in the file to indicate that Dr. Cort changed his mind about returning to the United States between December 29, 1952 and the date upon which he received the letter of February 9, 1953 from the draft board. The Departments' effort to take up Dr. Cort's passport in 1951 apparently had no effect on his plans for returning to the United States, inasmuch as it appears from his letter of December 29, 1952, a year later, that he was planning to come to this country.

As Dr. Cort indicated in his affidavit of November 2, 1959, complying with the order of his draft board would have meant the abandoning of an excellent teaching position and would, to that extent, have interfered with the development of his career. However, the Board does not feel that a desire to remain abroad for the purpose of self-advancement takes a person outside of the purview of Section 349(a)(10) of U. Immigration and Nationality Act.

The fact that Dr. Cort is under indictment for violating the Selective Service Act does not preclude a holding that he expatriated himself.

By failing to comply with the notices sent to him by his local board, Dr. Cort brought upon himself the presumption mentioned in Section 349(a)(10), that his continued absence from the United States was for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States. Even if the Board should consider that the presumption could be overcome by showing that a person remained abroad for a purpose other than to avoid the military service, the evidence in Dr. Cort's case, taken as a whole, does not show that he remained abroad for a purpose other than to avoid being drafted.

The evidence shows, by Dr. Cort's own admission, that he intended to return to the United States on or before [fol. 122] July 1953 but that, following the notices sent to him by his draft board, he changed his plans and remained abroad.

Findings

The Board finds (1) that, as of December 29, 1952, Dr. Cort intended to return to the United States on or

before July 1953; (2) that Dr. Cort's draft board, on February 9, 1953, June 4, 1953, and July 3, 1953, sent him notices to report for physical examination; (3) that, on August 13, 1953, the local board sent Dr. Cort an order to report for induction on September 14, 1953; (4) that Dr. Cort did not comply with any of the notices or make any reply to the local board; (5) that Dr. Cort did not return to the United States as he had planned but remained in Europe; (6) that, during the above-mentioned period, the United States was in a state of national emergency; (7) that Dr. Cort has not overcome the presumption raised in the last sentence of Section 349(a)(10) of the Immigration and Nationality Act; and (8) that Dr. Cort remained outside of the jurisdiction of the United States for the purpose of avoiding training and service in the military, air, or naval forces of the United States, thus expatriating himself under the provisions of the aforementioned section of law.

Decision

The previous administrative decision that Dr. Cort expatriated himself is affirmed.

s/ Robert D. Johnson
Acting Chairman

s/ Ashley J. Nicholas

s/ James G. Ottis

130 Cort, Joseph Henry

fols. 123 124 Secretary's Certificate to foregoing papers omitted in printing

[fol. 125] DEFENDANT'S EXHIBIT F-1

BEFORE THE BOARD OF REVIEW ON THE LOSS OF NATIONALITY IN THE PASSPORT OFFICE, DEPARTMENT OF STATE

60 2982

In re Appeal of)
) Docket No. 581
Joseph Henry Cort)

Stipulation

The following facts are stipulated by the appellant:

1. Dr. Cort was registered under the Selective Service Act with Local Board No. 43 at Brookline, Massachusetts on December 27, 1945.

2. He was given a physical examination on February 4, 1946 and found disqualified for general military service.

3. He was classified 4-F on March 5, 1946.

4. He was registered on July 5, 1949 under the Universal Training and Service Act of 1948 with Local Board No. 25 at Brookline, Massachusetts.

5. He was classified 3-A on September 20, 1949.

6. He was registered on May 25, 1951 under the provisions of the Doctors' Draft Law.

7. On September 11, 1952, he was classified 1-A (medical).

8. He was classified 1-A on February 9, 1953.

9. On February 9, 1953, a letter was sent to Dr. Cort by his Local Board directing him to report to Frankfurt, Germany within 30 days of the receipt of the notice for a physical examination as a Special Registrant.

10. On June 4, 1953, the Local Board sent a letter to Dr. Cort directing him to report for a physical examination to the Board in Brookline, Massachusetts on July 1, 1953.

11. On July 3, 1953, the Local Board sent a letter to Dr. Cort ordering him to report to Frankfurt, Germany for [fol. 126] a physical examination as a Regular Registrant within 30 days of the receipt of the notice and directing him to notify the Local Board as to his intended course of action; otherwise, he would be immediately processed for induction.

12. On August 13, 1953, the Local Board sent a letter to Dr. Cort ordering him to report to the Board on September 14, 1953 for induction.

13. Dr. Cort received the above-mentioned orders sent to him in 1953 but failed to report as directed.

/s/ Leonard B. Boudin
Attorney for Appellant

[fol. 127] DEFENDANT'S EXHIBIT F-2

[fol. 140] DEFENDANT'S EXHIBIT 7

Defendant's Exhibit 7.

DEPARTMENT OF EXPERIMENTAL MEDICINE

Tennis Court Road
CAMBRIDGE

Medical Research Council
and
University of Cambridge

Telephone
Cambridge [illegible]

Dear Sirs,

It is [illegible] that my application for [illegible] Harvard Medical [illegible] that my draft board is [illegible] [illegible] from a change of address [illegible] [illegible] I registered for the special draft [illegible] [illegible] [illegible] time I was then attending [illegible] [illegible] of my change of address, and [illegible] [illegible] and that by registering [illegible] [illegible] irregular [illegible], I was to state that it [illegible] [illegible] all of my plans were [illegible] medical advisory committee, [illegible] by Prof. [illegible].

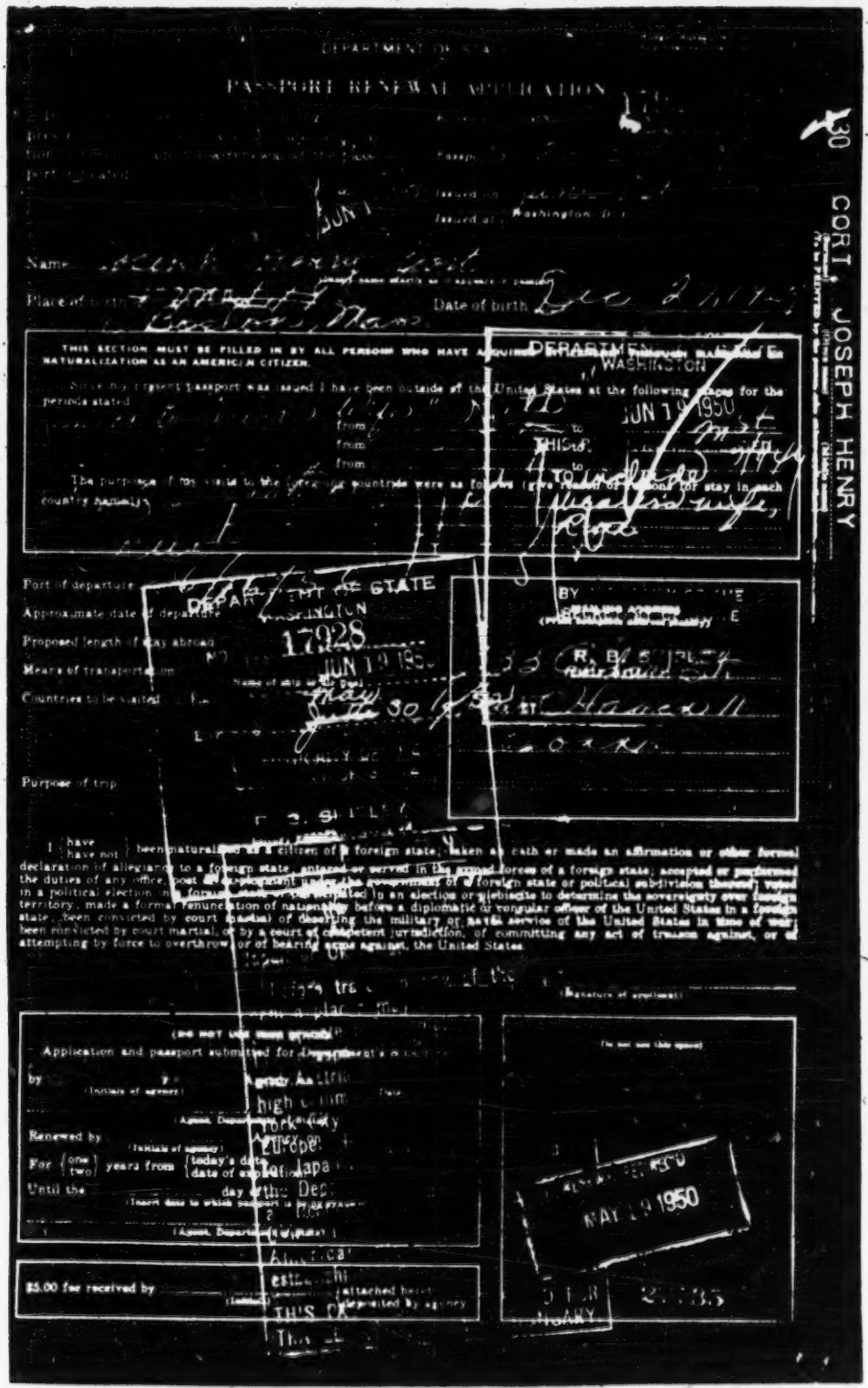
I assure [illegible] that I have [illegible]

Local Board No [illegible]
Norfolk County

FEB 27 '53

34 Mar[illegible]
Br[illegible]

{fol. 129} DEFENDANT'S EXHIBIT F 7


PASSPORT RENEWAL APPLICATION
Name
Place of birth
Date of birth
THIS SECTION MUST BE FILLED IN BY ALL PERSONS WHO HAVE ACQUIRED NATIONALITY THROUGH NATURALIZATION AS AN AMERICAN CITIZEN.
Since my present passport was issued I have been outside of the United States at the following places for the periods stated
The purpose of my visits to the foreign countries were as follows
Port of departure
Approximate date of departure
Proposed length of stay abroad
Means of transportation
Countries to be visited
Purpose of trip
I have / have not been naturalized as a citizen of a foreign state, taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state, entered or served in the armed forces of a foreign state, accepted or performed the duties of any office, post of employment under the government of a foreign state or political subdivision thereof, voted in a political election in a foreign state, participated in an election or plebiscite to determine the sovereignty over foreign territory, made a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, been convicted by court martial, or by a court of competent jurisdiction, of committing any act of treason against, or of attempting by force to overthrow, or of bearing arms against, the United States.
(Signature of applicant)
(DO NOT USE THIS SPACE)
Application and passport submitted for disposition
by
Renewed by
For one / two years from
Until the day of the
$5.00 fee received by
(Do not use this space)
DEPARTMENT OF STATE
WASHINGTON
JUN 19 1950
DEPARTMENT OF STATE
WASHINGTON
17928
JUN 19 1950
MAY 19 1950
CORT JOSEPH HENRY

[fols. 130-132] • • • •

Defendant's exhibit F-13—Letters from Walter M. Walsh, American Vice Consul, London, England to Joseph H. Cort, dated November 28, 1951, December 10, 1951 and December 27, 1951 omitted. Printed side page 72 ante.

[fols. 133-134] Secretary's Certificate to foregoing paper omitted in printing.

[fol. 135] DEFENDANT'S EXHIBIT G-2

Special Registration No. 1

September 8, 1952

Subject: JOSEPH HENRY CORT, M.D., PR.#3,
R-19-25-27-408

To: Mass. Medical Advisory Committee
8 The Fenway, Boston, Mass.

From: Local Board #25
34 Marion St., Brookline, Mass.

1. The above named registrant received his M.D. degree from Yale University School of Medicine in June 1951.

2. From an article in the Boston Herald May 27, 1952 we learn that he was awarded a one-year extension of his post-doctoral fellowship in the field of pediatries under an educational program sponsored by the National Foundation for Infantile Paralysis. Dr. Cort is conducting his studies at the University of Cambridge, England, under the supervision of Prof. R. A. McCance. Fellowships are awarded on recommendation of a national committee of scientists and clinicians.

3. May we have your recommendations.

Dorothy L. Manson, Clerk

11/17/52

M.A.B. wrote to Dr. Cort
Nat. Foundation N. Y.

[fol. 136] DEFENDANT'S EXHIBIT G-3

DEPARTMENT OF EXPERIMENTAL MEDICINE

Tennis Court Road
CAMBRIDGE

29.XII.1952
12 29 52

COPY

Special Registration No. 1

Dear Sirs,

I have applied for deferment from Selective Service from the sincere belief that my present, and particularly my future, civilian function is and shall be far more essential to my country than military service.

I received my M.D. in June, 1951 and since that time have had no clinical experience whatsoever, nor do I intend to acquire any. Under the auspices of the National Foundation for Infantile Paralysis, Inc., I have for the past two years been a trainee in research in Pediatric Physiology in the Dept. of Experimental Medicine in the University of Cambridge. Although the title of my Fellowship is a Pediatric one, this has involved only laboratory investigation. In July, 1953, I shall begin as Instructor in Physiology under Professor E. M. Landis, Department of Physiology, Harvard Medical School. There, my duties will be 80-90% teaching, and I will be primarily responsible for the Physiology section of the course of instruction for the first year graduate students in medical sciences in Harvard University, in a new General Education program in the medical sciences. Research will be very secondary at first in this new appointment.

I believe, therefore, that while my possible military usefulness will be only a very indirect one, my civilian function is an essential one.

Yours sincerely,

/s/ J. H. Cort
Joseph H. Cort, M.D., Ph.D.

Massachusetts Medical Advisory Committee
Selective Service System
8, The Fenway
Boston 15, Mass.

Local Board No. 25, Norfolk County
Jan 14 1953

34 Marion St., Brookline, Mass.

[fol. 137] DEFENDANT'S EXHIBIT G-4

Augustus Thorndike, M.D., Chairman
V. A. Getting, M.D.
Anne M. Bonner, D.M.D.
Margaret L. Boyle, R.N.

MASSACHUSETTS ADVISORY COMMITTEE
To the Selective Service System
8 The Fenway
Boston 15, Mass.

R 19-25 27 408

Special Registration No. 1

Date: 3 February 1953

SUBJECT: Corr. Joseph Henry M.D. Priority #11 Dept. of Experimental Med., Cambridge, England (Tennis Court Road). Under auspices of Nat'l Foundation for Infantile Paralysis, Inc.

July 1953 will begin as Instr. in Physiology Harvard Medical School.

To: Local Board No. 25
34 Marion Street
Brookline, Mass.

1. The Massachusetts Advisory Committee recommends that the subject special registrant be considered available for active military service.

s: Augustus Thorndike
Augustus Thorndike, M.D.
Chairman

cc: Major Bowman (Mass. SSS Hdq-)
Major Feeney do

Local Board No. 25, Norfolk County
Feb 4 1953
34 Marion St., Brookline, Mass.

[fol. 138] DEFENDANT'S EXHIBIT G-5

Special Registration No. 1

February 9, 1953

PR.3-M
R 19-25-27-408

Mr. Joseph Henry Cort
Department of Experimental Medicine
Tennis Court Road
Cambridge, England

Dear Doctor:

The Medical Advisory Commitee on February 3 recommended to the Board that you be considered "available for active military service". This recommendation was based on your appointment to the Department of Physiology, Harvard Medical School effective July 1953. Your classification, therefore, remains 1-A.

Attached is Form 223 ordering you to report for physical examination. If you prefer to be examined at Frankfurt you should write immediately to the Commanding Officer of the Facility advising him of the date on which you will present yourself for the examination. This date must be within thirty (30) days of the date you receive this letter. You should arrive at the Facility on that date. You must take with you to the Examining Facility this letter and all of the forms and papers you receive with it. You must pay all your expenses going to, while at, and returning from the Facility. When this local board is advised by the Examining Facility of the results of your examination, a Notice of Acceptability (DD Form No. 62) will be mailed to you showing whether or not you are acceptable to the armed forces.

Very truly yours,

Dorothy L. Manson, Clerk

Enc.
DD 47 (4 copies)
SSS Form 223
DD 390 in triplicate

P.S. We are also attaching three forms DD 390 which should *all* be completed by you and taken with you at time of examination.

[fol. 139] DEFENDANT'S EXHIBIT 6

Defendant's Exhibit 6

Local Board No. 45
Norfolk County
FEB 9 1953
34 Marion St.
Brookline, Mass.
(Local Board Stamp)

SELECTIVE SERVICE SYSTEM

Order to Report for
Armed Forces Physical Examination

February 9, 1953
(Date of mailing)

Pr.3-M

To JOSEPH HENRI COURT 19 25 27 408
(First name) (Middle name)

Department of Experimental Medicine, Tennis Court Road
(Street and number)

Cambridge England
(City) (County, if any)

You are hereby directed to report for Armed Forces Physical Examination to the Local Board (Station) at 34 Marion St., Brookline, Mass. In lieu of reporting to this local board, you may be examined outside the United States at the following Examining Facility of the Army.

FRANKFURT MILITARY POST SCREENING CENTER, HDQRS.BLDG., ANNEX B, RM.214-A, FRANKFURT ON THE MAIN, GERMANY

within thirty (30) days of the date your received this notice at 6:45 A. m. on the 27th of February 1953
(Hour)

Member or clerk of Local Board

IMPORTANT NOTICE

When you report for Armed Forces Physical Examination you will be forwarded to a Joint Examining and Induction Station where you will be given a complete physical examination to determine whether you are physically qualified for service. Upon completion of your physical examination, you will be returned to this Local Board. You will be furnished transportation and meals and lodgings when necessary. Following your Armed Forces Physical Examination your Local Board will mail you a certificate issued by the commanding officer of the station showing whether or not you are acceptable for service in the Armed Forces.

This Armed Forces Physical Examination is given for the purpose of determining your acceptability for military service. It is well, in arranging your affairs, to keep in mind the possibility of being rejected at the induction station. If you are employed, you should advise your employer of this notice, and of the possibility that you may not be accepted for military service. Your employer can then be prepared to replace you if you are finally accepted, or to continue your employment if you are rejected.

If you fail to report for Armed Forces Physical Examination as directed, you will be delinquent and will be immediately ordered to report for induction into the Armed Forces. You will also be subject to fine and imprisonment under the provisions of the Universal Military Training and Service Act, as amended.

If you are so far from your own Local Board that reporting in compliance with this order will be a hardship and you desire to report to the Local Board in the area in which you are now located, take this Order and go immediately to that Local Board and make written request for transfer for Armed Forces Physical Examination.

SSS Form No. 223 (Revised 9 25 41) (Supplies of original printing shall be used until exhausted)

[fol. 141] DEFENDANT'S EXHIBIT G 8

Defendants Exhibit G-8

SELECTIVE SERVICE SYSTEM

Order to Report for
Armed Forces Physical Examination

Local Board No. 19 Middlesex Mass.

June 4, 1953
Date of Mailing

To Joseph [illegible] Cash RD 9 25 27 408
First name Middle name Last name

Department of Experimental Medicine, Tennis Court Road
Number and street

Cambridge England
City State

You are hereby directed to report for Armed Forces Physical Examination to the Local Board stated above at

Cabot School, N. Marion St., Somerville, Massachusetts
Place of reporting

at 8:30 A. m. on the 1st of July 1953
Hour of reporting Day Month Year

[illegible]
Member or clerk of Local Board

IMPORTANT NOTICE

TO ALL REGISTRANTS:

When you report for Armed Forces Physical Examination you will be forwarded to an Armed Forces Examining Station where you will be given a complete physical examination to determine whether you are physically qualified for service. Upon completion of your physical examination, you will be returned to this Local Board. You will be furnished transportation and meals and lodging when necessary. Following your Armed Forces Physical Examination your Local Board will mail you a certificate issued by the commanding officer of the station showing whether or not you are acceptable for service.

If you are employed, you should advise your employer of this order and inform him that the examination is merely to determine your acceptability for service. It is not an order to report for induction or an order to perform civilian work.

If you are so far from your own Local Board that reporting in compliance with this order will be a hardship and you desire to report to the Local Board in the area in which you are now located, take this Order and go immediately to that Local Board and make written request for transfer for Armed Forces Physical Examination.

TO CLASS I-A AND I-A-O REGISTRANTS:

If you fail to report for Armed Forces Physical Examination as directed, you will be delinquent and will be immediately ordered to report for induction into the Armed Forces. You will also be subject to fine and imprisonment under the provisions of the Universal Military Training and Service Act, as amended.

TO CLASS I-O REGISTRANTS:

The Armed Forces Physical Examination is given for the purpose of determining your acceptability for service. If you are found acceptable, you will be available, in lieu of induction, to be ordered to perform civilian work contributing to the maintenance of the national health, safety or interest. If you fail to report for or to submit to the Armed Forces Physical Examination, you will be deemed to be available to be ordered to perform civilian work in the same manner as if you had taken the Armed Forces Physical Examination and had been found acceptable.

SSS Form No. 220 (Revised 3-10-48) (Supplies of original printing shall be used until exhausted except for I-O Registrants) [illegible]

[fol. 142] DEFENDANT'S EXHIBIT G-9

[SEAL]

MASSACHUSETTS STATE HEADQUARTERS
FOR
SELECTIVE SERVICE
349 Lincoln Street
Hingham, Massachusetts

In Replying Address
State Director of Selective Service
and Refer to
6.5 PFF.

5 June 1953

Special Registration No. 1

Local Board No. 25, Norfolk County
Jun 8 1953
34 Marion St., Brookline, Mass.

SUBJECT: JOSEPH HENRY CORT, M. D.
SELECTIVE SERVICE No. 19 25 27-408

To: Chairman, Local Board No. 25
34 Marion Street
Brookline, Massachusetts

1. Inclosed is the Cover Sheet containing the records of subject registrant.

2. This Office has attempted to ascertain the present whereabouts of Dr. Cort through the Dean's Office, Harvard Medical School. Information was received that the appointment as an instructor at that school had been cancelled in view of the registrant's selective service status.

3. Because this man has liability as a special registrant and also a regular registrant, is classified as available for military service both as a regular and special registrant, and as there is no definite proof in the file to show that he did not comply with your Order to Report for Armed Forces Physical Examination of 9 February 1953, as a

special registrant, it is suggested that, rather than declare Dr. Cort delinquent as a special registrant, he be processed immediately for induction as a regular registrant.

4. Since the information contained in his file indicates that the registrant will be in the United States in July, it is requested that he be ordered to report for preinduction examination as a *regular* registrant on 1 July 1953. The order should contain no information relative to taking his armed forces examination outside the United States.

5. Please advise this Headquarters of the developments in this case.

For the State Director:

/s/ Paul F. Feeney
PAUL F. FEENEY
Major, QMC
Chief, Manpower Section

Inclosure

[fol. 143] DEFENDANT'S EXHIBIT G-10

Special Registration No. 1

July 3, 1953

Dr. Joseph Henry Corl,
94 Hartington Grove
Cambridge, England

RI9 25 27-408

Dear Sir:

No communication has been received from you in reference to your notice dated June 4, 1953 ordering you to report to this office for Pre-Induction Examination on July 1, 1953, and you failed to report.

Attached is notice ordering you to report for examination at Frankfurt, Germany. You are to write to the Commanding Officer of the Facility immediately, advising him of the date on which you will present yourself for this examination. This date must be within thirty (30) days of the date you receive this letter. You should arrive at the Facility on that date. You must take with you to the Examining Facility this letter and all papers you receive with it. You must pay all your expenses going to, while at, and returning from the Facility. When this local board is advised by the Examining Facility of the results of your examination, a Notice of Acceptability (DD Form No. 62) will be mailed to you showing whether or not you are acceptable to the armed forces.

Upon receipt of this letter advise us immediately what action you are taking, whether you will return to the United States for Examination or go to Frankfurt, Germany. If we do not hear as to your course of action within thirty days, you will be immediately processed for Induction.

At the same time, advise what action you took upon receipt of notice to report for Examination on February 27, 1953 here, or in Frankfurt as a Special Registrant. No papers have been returned to us.

Very truly yours,

47's Enc.
223 "

Dorothy L. Manson, Clerk

(per Maj Feeney 7/27/53)

[fol. 144]

(Local Board Stamp)

Approval of Budget Bureau not required.

SELECTIVE SERVICE SYSTEM

Order to Report for Armed Forces Physical Examination

July 3, 1953
(Date of mailing)

To JOSEPH (Middle name) HEPP (Last name) C.MT (Registrant's Selective Service Number) 819 25 27 406

96 Hartington Grove
(Street and number)

Cambridge (City) England (State)

You are hereby directed to report for Armed Forces Physical Examination to the Local Board named above at: Examining Facility of the Army, Frankfurt Military Post Screening Center,

Headquarters Bldg., Annex B, Rm.21h-4, Frankfurt on the Main, Germany
(Place of reporting)

within thirty (30) days of the date you receive this notice

at (Hour of reporting) m., on the (Day) of (Month), 19

(Member or clerk of Local Board)

IMPORTANT NOTICE

TO ALL REGISTRANTS:

When you report for Armed Forces Physical Examination you will be forwarded to an Armed Forces Examining Station where you will be given a complete physical examination to determine whether you are physically qualified for service. Upon completion of your physical examination, you will be returned to this Local Board. You will be furnished transportation and meals and lodging when necessary. Following your Armed Forces Physical Examination your Local Board will mail you a certificate issued by the commanding officer of the station showing whether or not you are acceptable for service.

If you are employed, you should advise your employer of this order and inform him that the examination is merely to determine your acceptability for service. It is not an order to report for induction or an order to perform civilian work.

If you are so far from your own Local Board that reporting in compliance with this order will be a hardship and you desire to report to the Local Board in the area in which you are now located, take this order and go immediately to that Local Board and make written request for transfer for Armed Forces Physical Examination.

TO CLASS I-A AND I-A-O REGISTRANTS:

If you fail to report for Armed Forces Physical Examination as directed, you will be delinquent and will be immediately ordered to report for induction into the Armed Forces. You will also be subject to fine and imprisonment under the provisions of the Universal Military Training and Service Act, as amended.

TO CLASS I-O REGISTRANTS:

The Armed Forces Physical Examination is given for the purpose of determining your acceptability for service. If you are found acceptable, you will be available, in lieu of induction, to be ordered to perform civilian work contributing to the maintenance of the national health, safety or interest. If you fail to report for or to submit to the Armed Forces Physical Examination, you will be deemed to be available to be ordered to perform civilian work in the same manner as if you had taken the Armed Forces Physical Examination and had been found acceptable.

SSS Form No. 223 (Revised 1-15-53) (Reproduction of original printing shall be used until exhaustion except for minor changes)

[fol. 145] DEFENDANT'S EXHIBIT G-11

√ Defendant's Exhibit D-11

August 3, 1953

SUBJECT: JOSEPH HENRY COHEN [illegible]

TO: MASS. STATE HDQRS. SELECTIVE SERVICE
349 Lincoln St., Hingham, Mass.

FROM: LOCAL BOARD #25
34 Marion St., Brookline, Mass.

1. With reference to telephone conversation this morning, we are enclosing file of the above named registrant.

2. No communication has been received from him since he was sent an order to report for physical examination on July 3, 1953.

Dorothy L. Manson

Enc. Dorothy L. Manson, Clerk

For the State Director:

PAUL F. FARNEY
Major, CMC
Chief, Manpower Section

[fol. 146] DEFENDANT'S EXHIBIT G-12

Defendant's Exhibit G-12

SELECTIVE SERVICE SYSTEM

ORDER TO REPORT FOR INDUCTION

August 13, 1953

Copy mailed to Mr. Cort at
94 Washington Grove
Cambridge, Mass.

JOSEPH HENRY CORT R19 25 27 408

576 Washington Street.

Brookline Mass.

GREETING:

Having submitted yourself to a Local Board composed of your neighbors for the purpose of determining your availability for service in the Armed Forces of the United States, you are hereby ordered to report to the Local Board named above at Cabot School, 34 Marion St., Brookline, Mass.

at 6:45 A.M. on the 11th of September, 1953, for forwarding to an induction station.

* Date corrected from 8th to 14th by Lt. Cunningham Local Bd. Mem. 8/12/53.

IMPORTANT NOTICE

This Local Board will furnish transportation to the induction station where you will be examined, and, if accepted for service, you will then be inducted into a branch of the Armed Forces. If you are not accepted, return transportation will be provided.

Persons reporting to the induction station in some instances are found to have developed disqualifying defects since being examined and may be rejected for those or other reasons. It is well to keep this in mind in arranging your affairs, to prevent any undue hardship if you are rejected at the induction station. If you are employed, you should advise your employer of this notice and of the possibility that you may not be accepted at the induction station. Your employer can then be prepared to replace you if you are accepted, or to continue your employment if you are rejected.

WILFUL failure to report promptly to this Local Board at the place specified above and at the hour and on the day named in this notice is a violation of the Universal Military Training and Service Act, as amended, and subjects the violator to fine and imprisonment. You must keep this form and bring it with you when you report to the Local Board. Bring with you sufficient clothing for 5 days.

If you are on the occupational deferred list of your own Local Board that reporting in compliance with this Order will be a serious hardship and you desire to request a Local Board in the area of which you are now located, go immediately to that Local Board and make written request for transfer of your delivery for induction, taking this Order with you.

93

[fol. 147] DEFENDANT'S EXHIBIT G-13

Defendant's Exhibit G-13

9/11/53 R-19 25-27-408

Unknown person telephoned as of this date to advise that Joseph H. Cort would not report for production on Sept 14, 53. Said he was not in this country

L. H. Mackenzie

[fol. 148] DEFENDANT'S EXHIBIT G-14

Defendant's Exhibit G-4

SELECTIVE SERVICE SYSTEM
DELINQUENT REGISTRANT REPORT

(Local Board Stamp)

September 30, 1953
Date

George F. Garrity
P.O.Building, Boston, Mass.

IDENTIFICATION OF DELINQUENT

JOSEPH HENRY COHE — None
(Full name of registrant)

94 Hartington Grove, Cambridge, ENGLAND — LO.6-1829 (Brookline, Mass.)
(Registrant's present address) (Telephone number)

R19 25 27 408
(Order number)

034-18-3285
(Social Security number)

I-A
(Present classification)

None
(Other classifications)

I
(Race)

August 13, 1953
576 Washington St., Brookline, Massachusetts
with copy to 94 Hartington Grove, Cambridge, ENGLAND
(Address of registrant at time of delinquency)

Left country without Permit — Bd.advised he was in England on Oct.11,1951

Failed to report for Pre-Induction Exam. — July 1, 1953, Brookline, Mass. and within 30 days of receipt of notice of 7/3/53 at Frankfurt, Germany

Failed to report for Induction — September 11, 1953

Has Dorothy L. Hanson,
(Name of person making report)

L.B..25, 34 Marion St., Brookline, Mass. — RE.2-7014 — Clerk
(Local board) (Address) (Telephone number) (Title)

on September 11, 1953 — 94 Hartington Grove, Cambridge, England
(Date) (Address)

[fol. 149]

The person who will always know the delinquent's address is Boris Cort (father)

576 Washington St., Brookline, Mass.

Phone on June 27, 1953 by Dorothy L. Manson

L.B.#25, 34 Marion St., Brookline, Mass. BE.2-7014 who is a Clerk

local board with the following result - was advised son still in England, no knowledge of when he might return to the States. Has address of 94 Hartington Grove, Cambridge, Eng. given.

Tennis Court Road, Cambridge, Engl. has not

Is not

X X X

L.B. #25 Joseph Henry Cort July 3, 1953

[fol. 150] Secretary's Certificate to foregoing paper omitted in printing.

[fol. 151] DEFENDANT'S EXHIBIT H-1

DEPARTMENT OF EXPERIMENTAL MEDICINE
Tennis Court Road
Cambridge

29.XII.1952

Medical Research Council
and
University of Cambridge

60 2985

Telephone:
Cambridge 2389

Dear Prof. Landis,

I should like to accept the position of instructor in your department, as outlined in your recent letter. Concentrated teaching experience will be very welcome to me, and I only hope that I can meet to your satisfaction the formidable outline that you presented.

The only transportation that I have been able to arrange in a busy coronation spring will bring my wife and I to New York on the 29th or 30th of June, so that while it will just be possible for me to start on July 1st, it will be rather inconvenient to start work and try to find a dwelling place simultaneously. I should prefer to start on August 1st, which would also give me a chance to get my bearings in the department, but I shall begin in July should you desire it.

Of the department itself, I have few questions at the moment without any actual physical contact with it. I remember much of the physical layout from wandering through while still an undergraduate, and not the least of English training is to learn to adapt the same research to the available time and facilities. I am naturally more concerned with the teaching facilities at the present, and

the program already developed by Dr. Pappenheimer. Is there such a thing as a printed lecture or laboratory syllabus of the course in progress? Such things were very much in vogue in the undergraduate school and would be very helpful to me. I shall address more specific questions to Dr. Pappenheimer.

Sincerely yours,

/s/ Jos. H. Cort
Joseph H. Cort

Prof. E. M. Landis, M.D.,Ph.D.
Dept. of Physiology
Harvard Medical School
Boston 15, Mass., U.S.A.

[fol. 152] DEFENDANT' EXHIBIT H-2

January 7, 1953

Dr. Joseph H. Cort
Department of Experimental Medicine
University of Cambridge
Tennis Court Road
Cambridge, England

Dear Doctor Cort:

Thank you for your letter of December 29 accepting the Instructorship here. We will regard the matter as settled, with the one reservation that our tentative arrangements are still to be approved by the Dean's office. I shall be very much surprised indeed if any difficulties arise there.

In order that I may put in an official "Recommendation for Annual Appointment and Salary" would you please look over the attached sheet to make sure that it is correct insofar as I have filled it out. Some six items have been checked along the left-hand margin which will need to be added and which I could not find in the information you sent on to me previously. For instance, did you receive an A.B. from Harvard College in 1946? Do you have any official title in your present position? None of these items is tremendously important but the Dean's office likes to have as complete a record as possible. If I have made any errors please correct them.

As to date of arrival, August 1 or thereabouts will be in every way satisfactory to us and will have the advantage of giving you some free time after you return from England. Don't feel obliged to meet any fixed deadlines hence "August 1 or thereabouts."

I have asked Dr. Pappenheimer to gather together for you as complete a lecture and laboratory syllabus of the course as is possible at this date. You will be receiving this direct from him. He will be glad, I am sure, to answer any questions that may arise as you go through this material.

Looking forward to having you with us.

Very sincerely yours,

EML mnd
cc: Dr. Pappenheimer

Eugene M. Landis, M. D.

[fol. 153] DEFENDANT'S EXHIBIT H-3.

Department of Physiology
HARVARD MEDICAL SCHOOL
25 Shattuck Street, Boston 15, Mass.

Dr. Reginald Fitz
Harvard Medical School
25 Shattuck Street
Boston 15, Massachusetts

January 26, 1953

Dear Doctor Fitz:

This is a reply to your telephone call relative to my verbal statement that Dr. Joseph Cort will be "essential" to the Physiology Department as of August 1, 1953. Obviously, my duty is to look at this matter as a Head of Department in a pre-clinical *teaching* field in which the recruitment of good *teachers*, well-trained in fundamentals, is a continuously more difficult problem. I realize, also that many factors other than educational ones must enter into the final decision and will not be surprised to meet a denial of my recommendation in this case and others like it. Despite the difficulties that a denial will produce we will, of course, have to continue to teach our annual groups of graduate students and medical students with as little curtailment of course content and quality as we can possibly manage.

Our reasons for (a) making a new appointment at this time and (b) regarding Dr. Joseph H. Cort specifically to be "essential" are as follows:—

1. As of July 1, 1952, this department lost by transfer at higher salary to the School of Public Health an experienced instructor, Dr. Radford, without being able to make any replacement of equal experience.

(Note:—Medical students and dental students number 131, graduate students in the department, 2; graduate students in Physiology A 5 to 10, graduate students in Medical Sciences 210 ab, 15; Research Fellows usually 5 to 7. Total 158 to 165 students. For these 160 we have 5 experienced instructors. The 12 staff members you mentioned as listed in the catalog include:—

(a) a small nucleus of 5 experienced instructors
(b) courtesy appointments and affiliates, 3 to 4
(c) Research Fellows (who are also students) 4 to 5

(The small nucleus of five experienced men mentioned above are *responsible* for *all planning of lectures and laboratory work*; the affiliates help for a few hours at intervals in their special fields. The Research Fellows are essentially students.)

2. As of July 1, 1953, Dr. Ralph Kellogg, also an instructor of great competence and of several years experience will be leaving for a better job in California.

3. As of July 1, 1952, the Department of Physiology accepted responsibility for part of a new course designated Medical Sciences 201 ab which calls for instructors of exceptional experience. For this course we needed the [fol. 154] very best that we were able to supply in the department or obtain elsewhere. For this academic year Dr. John R. Pappenheimer, an Assistant Professor, was assigned to teach this course on practically a 100 percent teaching time basis, without appreciable time remaining for research activity. This, may I add, interrupted completely one of the most promising fundamental research programs I know of.

4. Dr. Papenheimer is quite justifiably unwilling to continue this 100 percent teaching assignment for another year, having done his share of this exacting work. Hence he and I went over very carefully the qualifications of some seven possible applicants finding none of them, except Dr. Cort, satisfactory either (a) because they were unwilling to do teaching to the extent of 80 to 100 percent of their time or (b) because they did not have the requisite advanced experience in physics, mathematics, physiology and some medicine which this special course requires. Hence, for this particular course, we felt that Dr. Cort was our only possibility, if the alleged aims of the course were to be fulfilled.

Under this arrangement, Dr. Pappenheimer would have taken over the equivalent of the work dropped by Dr. Kellogg on July 1, 1953, as mentioned under paragraph 2

above. As you will notice, there is still no adequate replacement for Dr. Radford and Dr. Cort's threatened unavailability will therefore reduce our teaching complement of *experienced* people by two, rather than one.

5. It is worth mentioning that Dr. Cort *would not be doing any appreciable research during* his appointment but would be spending (as I described it to him in offering him the position), 80 to 90 percent of his time in actual teaching service. He understands this and accepted it, though several other suitable applicants would not do so. This is far from a "luxury appointment."

For these reasons, I have no hesitation in recommending (from the University standpoint) that Dr. Cort's status be regarded as "essential",—if a staff of 4 or 5 experienced teachers, is to be provided for the 165 students which are assigned to us each year.

I would like to add one other important comment. I would be useless form the standpoint of the department or of the school to have Dr. Cort teaching here for *any period less than two years.*

Dr. Cort is now 26, more than usually experienced in research for that age—and not as experienced as most in clinical medicine. Two years form now he could enter military service at 28 and serve even better than now as a teacher and investigator.

Nevertheless, if it is your opinion that at best he would be with us for only 6, 12, or even 18 months, it will be simplest to deny this recommendation of mine right now. An early decision would be helpful because we will try at once and again to find a replacement and reorganize our various courses to match the experience and qualifications of whatever new man we can find.

If I can supply any further information please let me know.

Yours truly,

Eugene M. Landis, M.D.

EML?mml

[fol. 155] DEFENDANT'S EXHIBIT H-4

January 29, 1953

Dr. Augustus Thorndike, Chairman
Mass. Volunteer Advisory Committee to S.S.S.
8 Fenway
Boston, Mass.

Dear Dr. Thorndike:

This Sub-Committee has investigated the case of Dr. Joseph H. Cort and its accompanying papers.

This Sub-Committee recommends that he be not regarded as occupying a position essential to civilian care needs or medical teaching.

Yours sincerely,

Reginald Fitz, M.D., Secretary,
Sub-Committee on Medical
Education and Training.

[fol. 156] DEFENDANT'S EXHIBIT H-5

January 31, 1953

Dr. Joseph H. Cort
Department of Experimental Medicine
University of Cambridge
Cambridge, England

Dear Doctor Cort:

A complicating factor of first magnitude has entered into the plans we have been making by letter. Early in our correspondence I had thought briefly about your military status but then, frankly, in my firm interest concerning your aims and ours, I had forgotten the matter. The Dean's office, however, has received a request from your draft board asking whether this position which you are planning can be regarded as important enough to make you "essential" rather than available for draft. I wrote a letter to the Dean recommending, in view of the nature of the job, that you be termed "essential." This recommendation of mine was denied. There seems to be nothing more that I can do. One complicating factor was the fact that your draft board had not been notified of your change of address when you went overseas.

As matters stand, if you are physically fit, the chances seem to be that you would be here for not more than a few months before being required to enter the service. Dr. Fitz, Assistant Dean in charge of these matters, told me that if you were wise you would apply for a commission as soon as possible, even while overseas, if that is feasible but that is, of course, something that you would have to explore very carefully. There may be disadvantages in that procedure, too.

I send on these fragmentary comments, wondering what information and opinions you may have on the subject.

Very sincerely yours,

Eugene M. Landis, M. D.

EML/mml

[fol. 157] DEFENDANT'S EXHIBIT H-6

DEPARTMENT OF EXPERIMENTAL MEDICINE
Tennis Court Road
Cambridge

Medical Research Council
and
University of Cambridge

Telephone:
Cambridge 2389

10,Feb.,1953

Dear Prof. Landis,

I am surprised at your recent news since I had assumed, obviously without justification, that teaching positions would be essential, particularly for people with no clinical trainfng. At the present time I have received no information whatsoever from my draft board, and until I hear something definite from them I am reluctant to take a decision that may prove to be foolish or premature. I shall immediately communicate any developments.

Yours sincerely,

/s/ Joseph H. Cort
Joseph H. Cort

Prof. E. M. Landis
Dept. of Physiology
Harvard Medical School
Boston,Mass.,USA

[fol. 158] DEFENDANT'S EXHIBIT H-7

Dr. Joseph H. Cort
University of Cambridge
Department of Experimental Medicine
Tennis Court Road
Cambridge, England

March 6, 1953

Dear Doctor Cort:

Thank you for your note of February 10. In presenting your case to the Dean's office I mentioned all of the points given in your letter. The important fact is that the services are so desperately in need of M.D.'s, even with minimal clinical training, that the Dean's office regards it as practically impossible to expect to defend as "essential" anyone who is about to take a new post and particularly those who have received government subsidy during their medical school days, without having served at least 34 months (I think it is) in the services after graduation.

Dr. Reginald Fitz, Assistant Dean, suggested that so far as he could see the only conditions under which you can clarify your status is to apply at once for a commission, if that is possible abroad. If, for physical reasons, you were turned down then the Dean's office could proceed to consider your appointment. I suppose you have written your draft board for advice and I mention this merely to indicate the opinion of the Dean's office here.

Hence, there seems to be nothing that I can do except file the information enclosed with your letter, until I hear from you further. I regret as much as you do this apparently insuperable snag in plans but if you are physically fit (and they are refusing only those with major disabilities) it looks as though some military service or, possibly, research in some military establishment is the only solution.

With all good wishes,

Yours truly,

Eugene M. Landis, M. D.

EML/mml

[fol. 159] DEFENDANT'S EXHIBIT H-8

DEPARTMENT OF EXPERIMENTAL MEDICINE
Tennis Court Road
Cambridge

Medical Research Council
and
University of Cambridge

Telephone:
Cambridge 28

29.V.1953

Dear Prof. Landis,

I gather from the information available to me by thi
time that your advice and predictions were quite correct
My application, therefore, will have to remain on file
Sincerest regrets and regards.

s/ Joseph H. Cort
Joseph H. Cort, M.D., Ph.D

[fol. 160] Secretary's Certificate to foregoing papers omitted in printing.

[fol. 161] DEFENDANT'S EXHIBIT I-1

[SEAL]

NATIONAL HEADQUARTERS
Office of the Director
SELECTIVE SERVICE SYSTEM
451 Indiana Avenue Northwest
Washington 25, D. C.

60 6393

Address Reply to
The Director of Selective Service

Oct 16 1959

Mr. John T. White, Chief
Foreign Operations Division
Passport Office
Department of State
Washington 25, D. C.

Subject: Joseph Henry Cort
SS No. 19-25-27-408
Your Reference: PT/FEA-130

Dear Mr. White:

This is in reply to your letter of October 8, 1959, in which you set forth the facts pertaining to the above-named registrant and requested our views as to his status should he complete a tour of active duty with the United States Public Health Service or should he apply for an internship in that service.

On September 14, 1953, Dr. Cort failed to comply with an order from his local board to report for induction. As a result of this failure, he was indicted by the Federal grand jury, Boston, Massachusetts, in 1954 and that indictment is still outstanding. In our opinion, Dr. Cort is a flagrant violator of the Selective Service law. While the decision with respect to continuing the indictment in effect and prosecuting him should he return to this country is that of the United States Attorney, this agency would

seriously object to any decision not to proceed with his prosecution.

In response to your first question, under the current provisions of the Selective Service law should Dr. Cori enter into the active commissioned service of the Public Health Service and complete a tour of duty of 24 months or more, he would have fulfilled his service obligation. In answer to your second question, should he file an application for internship in the United States Public Health Service, we do not believe that that action of itself would be considered as compliance with the requirements of the Selective Service law.

For The Director,

/s/ Daniel O. Omer
DANIEL O. OMER
Colonel, JAGC
General Counsel

(Dec. 1952) DEFENDANT'S EXHIBIT I-2

[SEAL]

NATIONAL HEADQUARTERS
Office of the Director
SELECTIVE SERVICE SYSTEM
451 Indiana Avenue Northwest
Washington 25, D. C.

Address Reply to
The Director of Selective Service

Oct 28 1959

Mr. Robert D. Johnson
Acting Chairman, Board of Review
on the Loss of Nationality
Department of State
Washington 25, D. C.

Subject: Joseph Henry Cort
SS No. 19-25-27-408
Year Reference: 130

Dear Mr. Johnson:

This is in reply to your letter of October 27, 1959, requesting information from the above-named registrant's selective service file concerning the various steps which were taken in his case from the time he registered until he became a delinquent.

Dr. Cort has two selective service cover sheets, one as a regular registrant and one as a special registrant (M.D.). For greater clarity we will set forth the actions taken in each of these capacities separately rather than intertwining them both in chronological order.

Regular Registrant

Dr. Cort registered on July 5, 1949. On September 20, 1949, he was classified in Class III-A as a married man living with his wife. He was classified in Class II-A, which is an occupational deferment based upon his status as a doctor of medicine, on November 15, 1951. The local

board on February 19, 1953, classified him in Class I A as available for military service.

On June 4, 1953, Dr. Cort was mailed an order to report for an armed forces physical examination at Brookline, Massachusetts, on July 1, 1953. In view of the fact that the local board had received information that he was residing in Cambridge, England, the local board on July 3, 1953, mailed him another order to report for physical examination with instructions to report to an army examining facility in Frankfurt on the Main, Germany, within 30 days of the receipt of the notice.

[fol. 163] Dr. Cort failed to present himself for a physical examination and failed to communicate with his local board. Consequently, on August 13, 1953, the local board mailed him an order to report for induction in Brookline, Massachusetts, on September 14, 1953. Since he failed to comply with this order from his local board, he was reported to the United States Attorney in Boston, Massachusetts, as a delinquent in that he had failed to comply with either the order to report for an armed forces physical examination or the order to report for induction. Following this, an indictment against Dr. Cort was secured by the United States Attorney.

Special Registrant

As an individual holding a degree in medicine, Dr. Cort registered as a special registrant on May 25, 1951. The local board ascertained from a newspaper article that he had left the country and was pursuing a course of study at the University of Cambridge in England. On September 11, 1952, the local board classified him in Class I A M as a doctor available for induction in the armed forces.

On January 14, 1953, the local board received a communication from Dr. Cort requesting that he be considered for an occupational deferment principally because of his allegation that in July of 1953 he would become an instructor at the Harvard Medical School. On February 3, 1953, the Massachusetts Advisory Committee addressed a communication to Dr. Cort's local board and recommended that he be considered as available for active military

service. On February 9, 1953, as a special registrant, he was mailed an order to report for an armed forces physical examination at a military examining facility at Frankfurt on the Main, Germany. He failed to comply with this order.

As a matter of explanation of the actions taken with respect to Dr. Cort, the local board processed him for induction as a regular registrant after he became delinquent as a special registrant by failing to comply with the order to report for a physical examination mailed to him on February 9, 1953. While he was delinquent both as a special registrant and as a regular registrant, the order to report for induction which was mailed to him on August 13, 1953, and with which he failed to comply was based upon his liability as a regular registrant. He has evaded military service from September 14, 1953, to the present time. Should he return to the United States, he is subject to immediate prosecution under the outstanding indictment secured by the United States Attorney in Boston, Massachusetts.

[fol. 164] We are transmitting herewith photostatic copies of Dr. Cort's selective service files, one as a special registrant and one as a regular registrant. We would appreciate the return of these photostatic copies after you have extracted such information as you may deem necessary.

For The Director,

/s/ Daniel O. Omer
DANIEL O. OMER
Colonel, JAGC
General Counsel

Enclosures

☆ U. S. GOVERNMENT PRINTING OFFICE 1961 992062 12-8